

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

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In the Matter of Interest Arbitration Between :  
:   
**BOROUGH OF POINT** :   
**PLEASANT BEACH** : **INTEREST ARBITRATION**  
"the Borough or Employer" : **DECISION**  
: **AND**  
and : **AWARD**  
:   
**PBA LOCAL 106** : Docket No: IA-2007-088  
"the PBA or Union" :  
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Before: **Robert M. Glasson, Arbitrator**

**APPEARANCES**

**FOR THE BOROUGH:**

Kevin Starkey, Esq.  
Starkey, Kelly, Blaney, Bauer & White  
Of Counsel & On the Brief

**FOR THE PBA:**

Richard Loccke, Esq.  
Loccke, Correia, Schlager, Limsky & Bukosky  
Of Counsel & On the Brief

### **Procedural History**

The Borough of Point Pleasant Beach (the “Employer” or “Borough”) and PBA Local 106 (the “PBA” or “Union”) are parties to a collective bargaining agreement (the “CBA”) which expired on December 31, 2006. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the PBA filed a petition with the New Jersey Public Employment Relations Commission (“PERC”) on April 10, 2007, requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on May 25, 2007 from its Special Panel of Interest Arbitrators.

I conducted mediation sessions on August 29 and October 29, 2007 which proved unsuccessful. Formal interest arbitration proceedings were invoked and a hearing was conducted on December 11, 2007, when the parties presented documentary evidence and testimony in support of their positions. Both parties filed post-hearing briefs and the record was closed on February 19, 2008. The parties agreed to extend the time limits for the issuance of the award.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. While that Act, at N.J.S.A. 34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

The parties did not agree on an alternate terminal procedure. Accordingly, the terminal procedure is conventional arbitration. I am required by N.J.S.A. 34:13A-16d(2) to “separately determine whether the net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria in subsection g. of this section.”

## Statutory Criteria

The statute requires the arbitrator to:

decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each factor.

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c 68 (C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services with other employees generally:

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
- (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
- (c) In public employment in the same or similar jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 c. 34:13A-16.2); provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by Section 10 of P.L. 2007, c. 62 C. 40A:4-45.45)

## **PARTIES' LAST OFFERS**

### **PBA**

#### **Economic Proposals**

1. **Term of Agreement:** January 1, 2007 to December 31, 2010.
2. **Salary:**

The PBA proposed a five percent (5%) increase across-the-board on each rank, step and position in each calendar year.

3. **Officer-in-Charge Pay:**

The PBA proposes that all work performed in a Sergeant's position be compensated at the Sergeant's pay rate.

4. **PBA Time Off:**

The PBA proposes that the current one hundred twenty (120) hour annual provision be increased to two hundred (200) hours per annum.

5. **Detective Pay:**

The PBA proposes that the current Detective Stipend of Eight Hundred Ten Dollars (\$810) be modified to a two percent (2%) of base pay stipend.

**Non-Economic Proposals**

1. **Grievance Procedure:**

The PBA proposes a new grievance procedure as stated in the original proposal. The new procedure includes minor discipline.

2. **Bereavement Leave:**

The PBA proposes that the bereavement time allocation be on a day-for-day basis regardless of the schedule to which the officer is working.

3. **Disciplinary Information:**

The PBA proposes that any disciplinary actions, specifically final results, involving any PBA member shall be provided to the PBA by the Borough.

4. **Tentative Agreements:**

The PBA proposes that any tentative agreements reached between the parties at negotiations and mediation be made a part of the Arbitrator's award, including agreements related to the modification of Personnel Files.

**BOROUGH**

**ECONOMIC PROPOSALS**

1. **Term of Agreement:** January 1, 2007 to December 31, 2010.

2. **Salary:**

The Borough proposed a three percent (3%) increase across-the-board on each rank step and position in each calendar year.

3. **Longevity:**

The Borough proposes that the longevity provisions be modified to read as follows:

Beginning 5 through 8 years .....	2% of salary
Beginning 9 through 13 years .....	4% of salary
Beginning 14 through 18 years .....	6% of salary
Beginning 19 through 24 years .....	8% of salary
Beginning 25 years .....	10% of salary

The longevity payment shall be calculated only on salary up to a cap of \$45,000. Salary in excess of \$45,000 shall not be considered when calculating longevity payments. There shall be no longevity payments to any unit members hired after January 1, 2007.

4. **Medical Coverage:**

The Borough proposes that all full-time members of the unit shall contribute twenty dollars (\$20.00) per month for individual coverage and forty dollars (\$40.00) per month for dual or family coverage.

## **PARTIES' POSITIONS**

### **PBA POSITION**

The following are the PBA's arguments and contentions in support of the statutory criteria:

#### **Interests and Welfare of the Public**

PBA witness Marc Distelcamp described the changes in population flow and commuter/vacationer impact on the service load of the Point Pleasant Beach Police Department. He described certain times of the year and certain weekends during the year when the population of persons requiring Police service approaches one hundred thousand (100,000). Distelcamp described the workload of the Police Department as substantial. Annual calls in the first eleven months of 2007 approached twenty-two thousand (22,000). (P-3). This number does not include motor vehicle stops, non-parking violations and parking violations. Distelcamp stated that the workload made the normal workday of a Point Pleasant Beach Police Officer "very busy".

The PBA notes that, in addition to the heavy workload of the traditional Police services noted above, the department has also initiated many new and innovative services to the public and has new equipment which helps facilitate delivery of those services. The PBA points out that members of the Department are highly qualified with twenty members having special certification to teach Police Programs. Members of this Department have trained both new Officers and seasoned Officers from other Police Departments at the County Police Academy. Over the years various sworn personnel have been assigned out to Special Units such as the County Strike Force, Narc/County Level Prosecutor's Office Investigation Units/SWAT Team/County Fatal Accident Support Team/ and numerous other County and Inter-Municipal activities. Due to the geography, beachfront land, there is also a Homeland

Security liaison who is detailed to keep current and keep in communication with various targets that were acknowledged to exist in town.

In addition to the workload increases, there are also numerous new chain stores, franchises and expansions of existing commercial establishments which bring people into town and have an impact on the Point Pleasant Beach Police Department. Distelcamp described the influx of gang activity (specifically Latin Kings) and other unique challenges to law enforcement. What had been thought of as empty vacation accommodations, which were not used in the winter, are now used for Section 8 housing, bringing in persons who would otherwise possibly be considered homeless. All of this represents additional workload and challenge to the Borough Police Department.

According to the PBA, all of these challenges, increased work activities, and improved public services have been provided by a relatively static work force. The number of sworn Police Officers available in December of 2007 is virtually the same as it has been for more than a decade. If there has been a change it is with respect to less promotional opportunities than existed in the past. The current sworn work force is reflected in the following chart:

**Current Sworn Working Staff**  
(See P-2)

<b>Chief</b>	<b>1</b>
<b>Captain</b>	<b>1</b>
<b>Lieutenant</b>	<b>2</b>
<b>Sergeant</b>	<b>5</b>
<b>Patrol Officer</b>	<b>15</b>
<b>TOTAL</b>	<b>24</b>



The PBA submits that the increases in productivity are obvious given a static work force. The static work force has been able to meet increasing demands for service caused by increased land use, increased year round population and increased out-of-town persons entering the Borough.

The PBA cites Distelcamp’s testimony that the *esprit de corps* within the Department is excellent and the working relationship is very strong. He testified that the image and esteem of the Borough Police Officer in the eyes of the public is very high. The PBA maintains that this is an excellent Police Department doing an excellent job for the public and therefore the interests and welfare of the public are well served by the police officers in this Department.

**Comparison of Wages, Salaries and  
Conditions of Employment**

The PBA contends that an examination of this criterion shows significantly lower base pay and benefits for the Borough’s Police Officer when compared to their peers in area municipal police departments. The following chart provides a comparison of the 2006 Top Step Officer rates:

**2006 Base Rate Comparisons Based on PBA Exhibits**

	<b>2006 Patrol Officer Top Step Base Rate</b>
<b>Freehold</b>	\$87,415
<b>Lakewood</b>	\$82,349
<b>Manchester</b>	\$90,658
<b>Ocean County Prosecutors</b>	\$81,112
<b>Point Pleasant Borough</b>	\$83,157
<b>Brick</b>	\$94,461
<b>Jackson</b>	\$86,838

<b>Sea Girt</b>	\$86,300
<b>Avon</b>	\$80,117
<b>Brielle</b>	\$86,442
<b>Belmar</b>	\$83,970
<b>AVERAGE</b>	\$85,711
<b>Point Pleasant Beach PBA 2006 Top Step Base</b>	<b>\$80,004</b>
<b>Pt. Pleasant Beach PBA 2006 Base at Maximum Compared to Average</b>	<b>(\$5,707)</b> <b>(7.31%)</b>

A review of the previous chart shows the significant shortfall in average base pay for the Top Step Police Officer. Top Step is important because it is the pay rate an officer receives for most of their career. The PBA notes that in 2006, Top Step officers are \$5,700 below the average. An initial “equity adjustment” or adjustment to get to average requires a 7.31% increase in 2006 which is more than the PBA is seeking in any year of the new CBA. The PBA notes that Borough officers will remain behind their peers even if they receive above average salary increases since officers in the cited comparable jurisdictions are receiving increases in base salary in 2007, 2008, and 2009. These increases are shown in the following chart:

**Base Rate Changes Based on PBA Exhibits in Evidence**

	2007	2008	2009
<b>Bradley Beach</b>		4.3	4.5
<b>Freehold</b>	4		
<b>Lakewood</b>	4	4	
<b>Manasquan</b>	4	4.25	4.25
<b>Ocean Prosecutors</b>	4	4	4

<b>Ocean Sheriffs</b>	4	4	4
<b>Point Pleasant Borough</b>	4	4	4
<b>Seaside Park</b>	4		
<b>STFA</b>	4	4	
<b>Brick</b>	4	4	
<b>Sea Girt</b>	4	3.9	3.9
<b>Manchester</b>	4.5		
<b>Avon</b>	3.75	4	
<b>Brielle</b>	4.1	3.9	
<b>Belmar</b>	4		
<b>AVERAGE</b>	<b>4.25%</b>	<b>4.03%</b>	<b>4.11%</b>

The PBA submits that the collective impact of the 7.31% shortfall, when added to the annual increases shown above, is significantly above what the PBA is seeking in this proceeding. The PBA asserts that its salary proposal is well documented and supported by evidence in the record.

According to the PBA, there are other issues which must be looked at when comparing compensation and other benefits. The PBA submits that the following chart reflects various benefits which are not enjoyed by Borough police officers, i.e., numerous towns have a 4/2 work schedule which generates 1,946 annual work hours. This 4/2 work schedule is significantly less than the 2,080 hours worked by Borough police officers. Other benefits which are above those received by Borough officers include: Educational incentive programs, clothing allowance programs, court minimums, re-call minimums, *etc.*

**Miscellaneous Benefits in Area Contracts**

<b>Bradley Beach</b>	\$950 Clothing Allowance Six (6) Personal Days Numerous Stipends Up to \$2,000 4/2 Work Scheduled (1946 Annual Hours)
<b>Freehold</b>	\$87,415 Base in 2006 144 Annual Delegate Hours \$2,100 Detective Allowance \$15 per Credit for all Educational Credits
<b>Lakewood</b>	Five (5) Year Maximum Pay \$82,349 in 2006
<b>Manasquan</b>	AA Degree \$1,880 per year BA Degree \$2,200 per year \$775 Clothing Allowance Two (2) Hour Recall Minimum Five (5) Personal Days
<b>Manchester</b>	\$90,658 Top Step Base \$1,500 Annual Senior Officer Differential \$1,000 BA Annually \$500 AA Annually \$800 Clothing Allowance Four (4) Annual Personal Days
<b>Ocean Prosecutor's Office</b>	\$81,112 Base for 2006 \$500 AA Educational Incentive \$800 BA Educational Incentive \$1,000 MA Educational Incentive Four (4) Hour Minimum on Recall
<b>Ocean Sheriffs</b>	\$500 AA Educational Incentive \$800 BA Educational Incentive \$1,000 MA Educational Incentive Two (2) PBA Days Per Month Both President and Delegate and Convention Leave
<b>Point Pleasant Borough</b>	\$83,159 Base in 2006 4/2 Work Schedule (1946 Annual Hours) \$950 AA Educational Incentive \$1,100 BA Educational Incentive \$1,000 Detective Allowance \$750 EMT Certification

<b>Brick</b>	\$94,461 Annual Base in 2006 Work in Higher Rank Pay Fifteen (15) Holidays Three (3) Hour Recall Minimum As Needed PBA Time and Convention Leave
<b>Jackson</b>	\$86,838 Base for 2006 \$700 AA Educational Incentive \$1,350 BA Educational Incentive \$1,550 MA Educational Incentive \$10,000.00 Funeral Expense Four (4) Hour Court Minimum 4/2 Work Schedule
<b>Sea Girt</b>	\$86,300 Base for 2006 \$750 Clothing Allowance
<b>Avon</b>	\$80,117 Base for 2006 \$925 Clothing Allowance Five (5) Personal Days
<b>Brielle</b>	\$86,442 Base for 2006 Five (5) Personal Days \$1,000 AA Educational Incentive \$1,500 BA Educational Incentive \$1,000 Clothing Allowance
<b>Belmar</b>	\$83,970 Base for 2006 Four (4) Hours Court Minimum

The PBA asserts that the overall benefit program in the Borough lags behind other departments in many areas. Additional support for non-base wage proposals of the PBA is found in these other CBAs. Virtually all of these CBAs have an Officer-in-Charge provision providing for pay at the higher rate when a Patrol Officer acts in a higher rank.

According to the PBA, time off for PBA officials is more liberal in virtually all other jurisdictions. As established by testimony, there isn't enough PBA time off to effectively serve the Local. The PBA Delegate has been recently elected as a Vice-President of the New Jersey State PBA. The testimony established that even in the preceding years, prior to the election of the Delegate to the State Office, there was not enough time to serve the Local

properly. The PBA contends that the Borough offered no evidence nor testimony to counter this concern.

The PBA contends that Detective pay ranks at the lowest level of all comparisons and that the Borough offered no contradicting testimony or evidence.

The PBA seeks modifications regarding certain non-economic issues. The PBA notes that the current Grievance Procedure provides for a definition that is less than the statute provides at *NJSA 34:13A-5.3*. The PBA asserts that its definition is more closely aligned with the statutory definition of a grievance. The PBA submits that the procedure provides for an orderly movement of grievances with a reasonable number of days at each step and is consistent with a more standardized practice and covers contingencies not mentioned in the current contract grievance procedure.

The PBA submits that its “Bereavement” proposal, a clarification of that which is currently being implemented, was supported by the testimony of Officer Distelcamp which established both the logic and practice of permitting bereavement time for close family members to be on a “day for day basis”. The PBA acknowledges that in the past, eight-hour days were used for computation. However, officers now work twelve-hour work days and officers have been permitted to take twelve-hour days for appropriate bereavement. The PBA submits that it would defy logic and human compassion to expect a Police Officer to only grieve in eight-hour blocks for the loss of a close family loved one. The PBA asserts that it only seeks to clarify and incorporate the recent practice to make it clear.

The next non-economic proposal concerns disciplinary information. The PBA submits that this information is sought for appropriate and proper representation of its members. The PBA is not seeking to become involved with ongoing investigations or any form of confidential police review and evaluation. All the PBA is asking for is the final

result. If a person is late for work and a standard penalty is a verbal reprimand, then the PBA is entitled to know the final result.

Finally, the PBA seeks confirmation of the tentative agreement regarding “Personnel Files” which was Item 5A on the PBA’s initial proposal.

The PBA notes that it focused its comparisons primarily on other Police Department contracts and Awards. The PBA maintains that the best comparisons are those with other law enforcement agencies. The PBA asserts that the job of law enforcement is unique and said uniqueness predicates peer comparison. However, the PBA cites the Borough’s negotiated settlements with other Borough employees. The PBA cites the Borough’s agreement with the Transport Workers Union which represents the Borough’s blue collar employees. (B-10). The PBA points out that Article XVIII, Salary, provides for a minimum of a 5.5% salary increase in 2007, 2008 and 2009. The 5.5% salary increase is exceeded if the dollar rate stated is more than 5.5%. The employees therefore get the minimum of the dollar rate increase or 5.5%, whichever is greater. The PBA asserts that the 5.5% salary increase to other employees of the Borough is inconsistent with the Borough’s 3% salary proposal for police officers. The PBA also cites B-9, a 2004-2007 CBA with Teamsters Local 469, which provides for a 5.5% salary increase in 2007.

The PBA asserts that the Borough’s settlements with other Borough employees support its proposal for salary increases.

#### **Private Sector Comparisons**

The PBA disputes the Borough’s comparisons to private sector employment arguing that such comparisons are not entitled to great weight. Due to the unique statutory obligation and treatment of police officers under New Jersey Law, any comparison of said law as it

applies to private sector employees as compared to police officers must result in a strong justification for much higher compensation to be paid to police officers. The PBA cites the analysis of private sector comparisons by Interest Arbitrator Carl Kurtzman:

As other arbitrators have noted, it is difficult to compare the working conditions of public sector police officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison may be made. The standards for recruiting public sector police officers, the requisite physical qualifications for public sector police and their training and the unique responsibilities which require public sector police to be available and competent to protect the public in different emergent circumstances sets public sector police officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight. (Borough of River Edge and PBA Local 201, PERC IA-97-20, pg. 30)

The PBA respectfully asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no private sector job that is comparable to that of a police officer. A police officer has obligations both on and off duty. This is most unusual in the private sector. A police officer must be prepared to act and, under law, may be armed at all times while anywhere in the State of New Jersey. This is not seen in the private sector. The police officer operates under a statutorily created public franchise of law enforcement with on and off duty law enforcement hours. Again such public franchise and unique provision of statutory authority is not found in the private sector. There is no portability of a pension in the law enforcement community after age thirty-five. Police officers may not take their skills and market them in other states as one may market one's own skills in the private sector. A machinist or an engineer may travel anywhere in the country to relocate and market their skills. This is not possible for a police officer. The certification is valid locally only. The nature of police work is inherently one of hazard and risk. This is not frequently seen in the private sector.



The PBA submits that the following represents certain statutory and other precedential laws controlling the relationship of police officers to their employers in the public sector:

1. The Federal Fair Labor Standards Act, 29 USCA sect.201, et seq. applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the forty hour work week and the 7-day work cycle, police officers are treated to much less protection. Police officers have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq. does not apply to the employment relationship between a police officer and the officer's public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police, **Perry v. Borough of Swedesboro, 214 NJ Super. 488 (1986).**
3. The very creation of a police department and its regulation is controlled by specific statutory provisions allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. **NJSA 40A:14-118.** There is no such statute covering private employment in New Jersey.
4. **NJS 40A:14-122** provides for specific qualifications which are statutorily mandated for police officer employment. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, may be deemed to cease to be a member of such police department or force, **NJS 40A:14-122.** No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of police officers in New Jersey under title 11 and other specific statutory provisions exist under **40A:14-122.2.** There are no such private sector limitations on promotion.
7. A police officer in New Jersey must be a resident of the State of New Jersey, **NJS 40A:14-122.8.** No such restriction exists for private sector employees.

8. Hiring criteria and order of preference is set by statute **40A:14-123.1a**. No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, **40A:14-127.1**. No such provision exists for private employees in this state.
10. As a condition for employment in a police department in the State of New Jersey there must be acceptance into the applicable Police Retirement System, **NJS 40A:14-127.3**. No such requirement exists in private sector. The actual statutorily created minimum salary for policemen in New Jersey is set at below minimum wage **NJS 40A:14-131**. Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A police officer's work shall not exceed six days in any one week, "except in cases of emergency". **NJS 40A:14-133**. The Fair Labor Standards Act gives superior protection to private sector employees.
11. **NJS 40A:14-134** permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in private sector. There is no such prohibition in the law applying to private sector employees.
12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.
13. Police Officer pensions are not covered by the federal ERISA Pension Protection Act. Private sector employees pensions are covered under ERISA.
14. Police officers are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, **NJS 40A:14-147** to **40A:14-151**. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

Perhaps the greatest differentiation between police officers and private employees generally is the obligation to act as a law enforcement officer at all times of the day, without regard to

whether one is on duty status within the state or not. Police officers are statutorily conferred with specific authority and “. . . have full power of arrest for any crime committed in said officer’s presence and committed anywhere within the territorial limits of the State of New Jersey.” **NJS 40A:14-152.1**. A police officer is specially exempted from the fire arms law of the State of New Jersey and may carry a weapon off duty. Such carrying of deadly force and around the clock obligation at all times within the State is not found in the private sector. Police officers are trained in the basic police academy and regularly retrain in such specialties as fire arms qualifications. This basic and follow up training schedule is a matter of New Jersey Statutory law and is controlled by the Police Training Commission, a New Jersey statutorily-created agency. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of police officer certification and the police officer’s job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. Where a company may move from one state to another, there is more of a global competition to be considered. The New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to another state or even another country. This creates a depressing factor on wages. This is not possible in the public sector. The employees must work locally and must be available to respond promptly to local emergencies. The residency restriction has been above mentioned. In a private sector labor market one might compare the price of production of an item in New Jersey with the price of production of that item in other states, even in Mexico.

The PBA asserts that local comparisons are more relevant with police wages. The PBA cites the decision of Arbitrator William Weinberg in the Village of Ridgewood case:

Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards. This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police comparisons. The farther from the locality, the weaker the validity of the comparison. Police comparisons are strongest when in the local area, such a contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are non-existent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

The PBA submits that any time there is a comparison made between a police officer and a private employee generally, a police officer's position must be given greater weight by such comparisons. The police officer lives and works within a narrowly structured statutorily created environment in a paramilitary setting with little or no mobility. The level of scrutiny,

accountability and authority are unparalleled in employment generally. The police officer carries deadly force and is licensed to use said force within a great discretionary area. A police officer is charged with access to the most personal and private information of individuals and citizens generally. His highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure in such a wide array of titles as the nearly infinite number covered in the general category of “private employment” there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in police work. A police officer is a career committed twenty-five year statutorily oriented specialist who is given by law the highest authority and most important public franchise. The police officer should be considered on a higher wage plane than private employment generally.

#### **Lawful Authority of the Employer**

The PBA contends that an analysis of this case consistent with this criterion shows that the Borough has the ability to fund an award of the full package proposed by the PBA. The analysis is essentially a review under the “Cap Laws”, Expense Guide and Revenue side. The Revenue side Cap, g9, will be effective in the next fiscal year as the rules had not yet been promulgated when the 2007 Budget was adopted. Reviewing this matter under the g5 Expense guide criteria again provides no prohibition to an award of the PBA position.

The PBA notes that the 2007 Municipal Budget (J-6) was adopted well within the Cap restrictions. The Cap calculations are set forth on *Sheet 3b* of the Municipal Budget. On the left-hand side of that page near the bottom there is a line indicating “Level of Operating Appropriations within Cap” of a total amount of \$8,799,102. Below that line there is a statement indicated as “2007 Operating Operations within Cap” of \$8,711,344.

The PBA contends there is no Cap problem in the Borough since the adopted Budget is \$87,750 below Cap. According to the PBA, consideration of the Borough's Cap numbers must be measured against the cost of the Borough's salary costs in the bargaining unit. The PBA submits that the following chart illustrates this consideration:

**Current Sworn Working Staff (See P-2)**

(A)	(B)	(C)	(D)
<b>Captain</b>	<b>1</b>	<b>\$106,485</b>	<b>\$106,485</b>
<b>Lieutenant</b>	<b>2</b>	<b>\$96,805</b>	<b>\$193,610</b>
<b>Sergeant</b>	<b>5</b>	<b>\$88,004</b>	<b>\$440,020</b>
<b>Patrolman/Detective</b>	<b>15</b>	<b>\$80,004</b>	<b>\$1,200,060</b>
<b>TOTAL</b>	<b>23</b>		<b>\$1,940,175</b>
			<b>1% = \$19,401</b>

The PBA notes that the total cost of base rate salary in the bargaining unit in 2006 is \$1,940,175. Thus, 1% is \$19,401. The PBA acknowledges that Cap savings do not necessarily represent cash, however an under Cap amount of \$87,758 represents more than 4.5% of the base rate. The PBA submits that the Borough does not have a Cap problem and will not likely have a Cap problem in the future.

**Impact on The Taxpayers and Residents**

The PBA asserts that a review of this case under criteria *g6* establishes that there is no appreciable impact on the taxpayers and residents of an award of the PBA's position. The PBA submits that this is due to the significant revenue generated by the officers in the Police Department.

The Police Department brings in more money to the Borough than the total cost of the entire bargaining unit base salary. The PBA notes that the fourth sheet of the Municipal

Budget (J-6) shows that total fines in the Municipal Court for 2006 were \$1,569,992. B-6 shows that the total revenue from the parking meters in 2006 was \$1,266,791. The combination of these two sources of revenue is \$2,836,783. In addition to this income, there are also numerous other funding sources for Police operations which the town receives. A review of Budget Sheet 9 indicates several of these sources which include "Cops in Shops" (\$2,923), "Donations K-9" (\$500), "Safe and Secure Communities Program" (\$49,711), "Body Armor Fund" (\$3,656), and "Secure Our Schools" (\$30,519).

The total amount charged to the department in 2006 was \$2,906,757. (See *Sheet 15*). The total wages and salaries include the Chief of Police, some clerical persons and Specials. Without question, the amount of revenue generated within the Borough exceeds the amount of cost for the sworn Police Officers in this bargaining unit. The PBA submits that the taxpayers in the Borough receive year round Police protection which is largely paid for by the transients or summer visitors.

The PBA maintains that the Borough is a fiscally strong community. A review of *Sheet 4* of the Budget (J-6) on the line entitled "Interest on Investments and Deposits" shows income for 2006 of \$245,805. If this is just the interest one may assume there is a large sum at investment. A review of the AFS for 2006 (J-6) at *Sheet 9, Line 1* shows that the current "Cash Book Balance" is \$5,418,937. A review of the 2007 Municipal Budget (J-6) at *Sheet 39* in the line on the upper left column, under "Cash and Investments" shows a balance of \$5,418,937. This is the source of money generating the interest reflected on *Sheet 4* of the Budget. A review of On *Sheet 39* under the line captioned "Total Assets" shows the amount of \$6,281,266. This is apparently a trend. A review of the surplus balance (See *Budget, Sheet 39, upper right column*) shows an increase from the surplus in 2005 of \$1,705,516 to

a surplus in 2006 of \$2,187,075. This represents an increase on the Surplus Balance Line account of \$481,559, a 28.2% increase in the Surplus Balance. In addition to this, at the bottom of the same page under the line captioned "Surplus Balance Remaining" there is still \$857,075. Apparently the Borough anticipates this type of surplus to continue as noted on the top of Budget Sheet 4 under the Line in the 2007 Budget of "Surplus Anticipated" where it reflected an increase from 2006 to 2007 in that Line Item of \$127,235 or 10.3%. The PBA submits that the Borough is a fiscally sound municipality.

The PBA notes that the Borough has a very high tax collection rate. A review of the AFS (J-7) at Sheet 22, Line 13, shows that the percentage of cash collections on the 2006 Tax Levy was 98.12%. A review of the AFS shows that for the last three years the collection rate exceeded 98% each year. It also shows that the Borough experienced nominal tax changes on the Municipal portion over those three years with one year actually seeing a reduction in the Municipal rate. Further, the assessed valuation has increased in each of the last three years.

The equalized valuation of taxable property in the Borough exceeds \$1.8 Billion. (J-11). J-11 shows that the total tax as a percentage of net debt is only 0.85%. The debt limit of 3.5% is considerably higher than the actual debt load. The PBA suggests that this is one more barometer of a solid fiscal picture in the Borough.

Finally, the PBA notes that only 21.2% of the tax levy is utilized for Municipal budget operations. The PBA submits that the Borough has the ability to fund the PBA's salary proposal.

#### **Cost of Living**

Both parties by stipulation entered a Joint Exhibit on this subject matter which was entered into evidence as J-8. J-8 is a September 21, 2007 publication of the Public



Employment Relations Commission. On Sheet 2 of J-8, the annual average wages in the “Total Private Sector” show a 4.6% increase. The “Total” at the bottom of the page reflects a 4.4% increase.

The PBA asks that consideration be given to the cost increases in basic obligations of households including the increases in oil, food, and virtually every expense covering family expenses and household needs.

### **The Continuity and Stability of Employment**

The PBA contends that a review of this criterion suggests an evaluation consistent with the private sector concepts of “area standards” and “prevailing wage”. In both cases the rate of change and the total compensation program analysis favors the PBA’s position. As established by the comparability data, the Borough’s Police Officers receive lower salaries than their peers and have no offsetting benefits. The wage increase sought in this proceeding will not bring these officers to average. It will do little more than narrow the difference with their peers. The Officer-in-Charge pay is a common benefit found in the other contracts in evidence. As the PBA witness testified at hearing, Police Officers are running shifts with increased frequency. Not only are they supervising other Police Officers but in many cases they are also supervising Specials which are used during summer hours. The PBA maintains that this is a significant obligation to be placed on these Officers that deserves appropriate compensation.

The PBA submits that the “Time Off” proposal has a minimal impact. The proposal seeks an additional eighty hours annually for the entire bargaining unit. The impact is less than one-tenth of one percent.

The PBA proposed a modified grievance procedure which has more definitive language and has appropriate response dates and filing dates to move the grievance. The

current grievance procedure lacks clarity in the step movement obligations and response dates. Further, the definition of grievance does not meet the statutory provision available under *NJS4 34:13A-5.3*.

The PBA contends that disciplinary information is needed to be able to fully represent its members. The PBA submits that it is not seeking to involve itself where it is not appropriate. All that is sought is the end result of a disciplinary proceeding for informational purposes. The PBA maintains that this is clearly provided under the case law developed through PERC and is appropriate for representational purposes in the future.

The PBA asks that I award its last offer on all economic and non-economic issues included in its last offer.

### **BOROUGH POSITION**

The following are the Borough's arguments and contentions in support of the statutory criteria:

#### **Interests and Welfare of the Public**

The Borough notes that the New Jersey Employer-Employee Relations Act (the "Act"), has been amended with respect to interest arbitration. A "reemphasis" and "redirection" of the statute now provide greater awareness and significance of the interest and welfare of the public. This is demonstrated by the following additional statutory provision:

It also is the public policy of this State to ensure that the procedure so established fairly and adequately recognizes and gives all due consideration to the interests and welfare of the taxpaying public; and

Further, it is the public policy of this State to prescribe the scope of the authority delegated for the purposes of this reform act; to provide that the authority so delegated be statutorily limited, reasonable, and infused with stringent safeguards, while at the same time affording arbitrators the decision making authority necessary to protect the public good; and to mandate that in exercising the authority delegated

under this reform act, arbitrators fully recognize and consider the public interest and the impact that their decisions have on the public welfare, and fairly and reasonably perform their statutory responsibilities to the end that labor peace between the public employer and its employees will be stabilized and promoted, and that the general public interest and welfare shall be preserved.

In rendering their awards, Interest Arbitrators are required to consider:

the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

Significantly, this statute has been revised to provide for conventional arbitration, giving the Interest Arbitrator greater flexibility in rendering his or her award.

#### **Burden of Proof**

The New Jersey Supreme Court decided two companion cases which have had a significant impact upon the interest arbitration process. See Hillside PBA Local 207 v. Borough of Hillside, 137 N.J. 71 (1994); Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). In Hillside and Washington, the Court examined the sufficiency of the evidence which the parties must present to an Interest Arbitrator and the relevance of the various eight statutory criteria. In Hillside, the Court instructed that “[i]n general, the relevance of the factor depends on the disputed issues and the evidence presented.” Hillside, 137 N.J. at 82 (citing N.J.S.A. 34:13A-6(f)(5); N.J.A.C. 19:16-5.9). The Court also directed the Interest Arbitrator to “determine which factors are relevant, weigh them, and explain the award in writing.” Id. Further, the Court cautioned that the Legislature did not intend that any one factor would be dispositive. Id. The Court further explained:

As the statute states, an arbitrator need rely not on all factors, but only on those that the arbitrator deems relevant. An arbitrator should not deem a factor irrelevant, however, without first considering the relevant evidence. An arbitrator who requires additional evidence may request the parties to supplement their presentations. . . . [T]he arbitrator need not require the production of evidence on each factor. Such a requirement might unduly prolong a process that the Legislature designed to expedite collective negotiations with police and fire departments. Id. at 83-84.

Moreover, even if the parties do not introduce evidence on a particular factor, the Interest Arbitrator's decision must explain the Interest Arbitrator's rationale for deeming that factor irrelevant. Id. at 84. "Without such an explanation, the opinion and award may not be a 'reasonable determination of the issues.'" Id. In summary, "an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why other factors are irrelevant." Id. at 84.

The Borough contends that the PBA has failed to meet its burden of proof with respect to its salary demands. The PBA failed to present any compelling argument or evidence in support of the necessary statutory criteria.

As set forth in more detail below, the evidence presented by the PBA has failed to justify the salary demands under the relevant criteria. Equally important, the PBA has failed to demonstrate that the Borough could legally pay the demanded increases under the provisions of the CAP law under the applicable regulations. The expert report submitted by the PBA addresses primarily the Borough's ability to pay, based upon revenue projections and expenditure calculations. But the PBA must necessarily prove that the Borough may legally meet its expenditure limits after the proposed salary increase is in place. The Borough maintains that the PBA has failed to meet that burden.

The Borough asserts that it presented substantial evidence in support of its proposals through demographic and comparability exhibits as well as its budget analysis and financial

summary, including the expert report submitted by Christine Brown. The Borough submits that it has met its burden of proof by demonstrating that the additional economic benefits are not warranted based upon demographic, wage and benefit comparability. The Borough further asserts that it met its burden of proof by demonstrating that its financial situation allows only for the salary increase proposed by the Borough if it is to meet its legal obligations under the CAP requirements.

The Borough contends that the statute and relevant caselaw do not show that the PBA's evidence has met the burden of proof as required by the statutory criteria. The PBA's proposals should therefore be rejected. On the other hand, the Borough, through its arguments and exhibits, has supported the salary proposals and other aspects of its offer as required by statute and applicable case law.

N.J.S.A. 34:13A-16(g) states that the Interest Arbitrator must determine the dispute based upon "a reasonable determination of the issues." "Reasonableness" requires the Arbitrator to apply a subjective standard. The Legislature enumerated nine statutory criteria to which the Arbitrator must give "due weight" in fashioning a decision.

The Act requires the Interest Arbitrator to consider "the interest and welfare of the public" in reaching his or her determination. N.J.S.A. 34:13A-16(g)(1). This criterion focuses upon the priority to be given to the public employee's wages and other economic benefits within a municipality's finite budget and plans. Hillsdale PBA Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 183 (App. Div. 1993), rev'd on other grounds, Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994).

Generally, a public employer best serves the public interest by striking a balance between satisfying its employees, thereby avoiding labor strife, and maintaining a stable level of government services. While a municipality may have difficulty balancing these competing

interests within the available budget, the municipality should not sacrifice fairness to its employees so that it may provide its residents with a plethora of unnecessary government services. On the other hand, a municipality should not reduce essential government services to satisfy the economic demands of over-reaching public employees.

The Supreme Court recognized that although compulsory interest arbitration is an adversarial process between a public employer and its employees, the public is a “silent party” to the proceeding. Hillsdale, 137 N.J. at 82. The Court described the impact the interest arbitration process has on the public:

This case arises from a salary dispute between a municipality and its police department, but its resolution inevitably will affect the public. In an era of rising costs and budget caps, a municipality feels the initial impact of salary increases for police and fire departments. The taxpayers, however, feel the ultimate effect. Id. at 76.

The Court also observed,

Compulsory interest arbitration of police and fire fighters’ salaries affects the public in many ways, most notably in the cost and adequacy of police and fire-protection services. Indeed, section 16g expressly requires the arbitrator to consider the effect of an award on the general public. Hence, an award runs the risk of being found deficient if it does not expressly consider “the interest and welfare of the public.” Id. at 82-83 (citations omitted).

Although the Act requires Interest Arbitrators to consider the impact of an award upon “the interest and welfare of the public,” Interest Arbitrators frequently do not give this factor its proper weight in deliberations. The Interest Arbitrator must consider the effect the award will have on the citizens and taxpayers of the Borough, except for law enforcement personnel, due to budgetary constraints. It most certainly would not be in the interest and welfare of the public to grant the PBA’s unreasonable demands which would either overburden the Borough’s taxpayers or reduce services.

According to the Borough, the public has criticized the interest arbitration process because of the high awards it produces. The average award granted wage increases to police and fire personnel that dramatically exceed inflation. If wage increases continue to outstrip inflation and private sector salary increases at the current pace, the relative burden on the taxpayer will continue to increase.

When the PBA develops its economic demands, it most obviously and properly takes into account the wants and desires of its members while placing little emphasis on the interests and welfare of the public, the Borough's ability to pay, the lawful authority of the Borough and the financial impact on the governing unit, its residents and taxpayers. When the Borough developed its economic proposal, it took into account not only the needs and desires of the bargaining unit, but also the above-mentioned criteria. The Borough is better equipped to properly gauge, weigh and consider these statutory criteria. The Borough submits that its proposal, which is reasonable and takes into account all of the statutory criteria, must be the position awarded by the Interest Arbitrator, even though the Interest Arbitrator has conventional authority.

An important element in determining the interests and welfare of the public is the demographics of the municipality. The demographics of the Borough are also important as they relate to the issue of comparability. The residents of the Borough, "fighting" relatively low per capita income, net valuation taxable, and state equalized value, are "saddled" with a high tax rate, on an equalized basis. Moreover, the burden of the tax rate, as related to police compensation, is imposed disproportionately on the permanent residents of the Borough, as opposed to the transient persons in the town.

The Borough submits that the testimony of Officer Distelcamp is telling in this regard. Distelcamp testified that the morale in the Police Department is generally at a high

level. He also testified to the winter population in the Borough of 5,314 persons and an increase to more than 50,000 in the summer months. Clearly, the Borough is a classic Jersey shore beach community, with a significant influx of tourists and visitors in the summer. Yet the Borough hires approximately 70 special officers in the summer to assist the regular officers in handling the influx of summer crowds. The 70 special officers, in addition to the 24 officers available for regular duty, provide a total of 94 police department personnel in the summer months, which is an extraordinary amount. Distelcamp also testified that a significant amount of commuters passes through the town, due to the state highway running through the Borough.

As a direct consequence of the demographics of the Borough, with the high rate of summer residents and significant number of commuters passing through town, the cost of maintaining the police department necessarily falls on the permanent residents who are property taxpayers in the Borough. Any compensation increase therefore is almost entirely borne by the permanent residents, while the PBA primarily bases its argument for a compensation increase on the out-of-town persons in the Borough, whether present for summer recreation or for commuting purposes.

Moreover, when compared with other, similar Jersey Shore communities, the Point Pleasant Beach PBA already receives higher compensation than most. For example, the most comparable municipalities in the area are those with similar demographics to the Borough, including a population that dramatically increases in size in the summer months. Those municipalities include: (i) Manasquan; (ii) Seaside Park; (iii) Avon by the Sea; (iv) Belmar; and (v) Bradley Beach. Each of those municipalities are oceanfront towns and each witnesses a sizable increase in residents in the summertime. Notably, a comparison of wages for patrolmen at Step 2 in each of those towns for 2007 discloses that only Bradley Beach



provides a higher level of compensation than Point Pleasant Beach at that level. Similarly, only one municipality has a higher base compensation for police officers at Step 7, namely Belmar. In Point Pleasant Beach, a second-year patrolman in 2007 would have made \$48,725 in base compensation, whereas a seventh-year patrolman would have made \$83,204 in base compensation. In the other towns noted, patrol officers in 2007 were paid as base salary, for Step 2 and Step 7 respectively: (i) Manasquan -- \$48,485 / \$82,819 (Ex. P-4); (ii) Seaside Park -- \$43,110 / \$80,675 (P-11); (iii) Avon -- \$46,386 / \$83,122 (B-5); (iv) Belmar -- \$43,372 / \$84,539 (B-7); (v) Bradley Beach -- \$57,318 / \$80,330 (P-1).

In light of these facts, the Borough submits that it is unreasonable for the PBA to demand a salary increase that will maintain a salary level higher than comparable shore communities. On the other hand, the salary offer of the Borough is reasonable, warranted, and in the interest and welfare of the public.

#### **Comparability and Overall Compensation**

The Act requires the Interest Arbitrator to consider a comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally in (a) public employment in the same or similar comparable jurisdiction (b) in comparable private employment and (c) in public and private employment in general.

The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. N.J.S.A. 34:13A-16(g)(2) and (3). The Borough contends that the comparability and overall compensation exhibits submitted at the interest arbitration hearing demonstrate the reasonableness of its position.

Moreover, the Borough also submitted evidence showing increasing health insurance costs. Although at the time of the hearing of this matter, the Borough had only a renewal proposal and not an adopted policy, the renewal proposal contained a net increase of 13% for the Borough's costs for health care policies and a net increase of 9.87% for prescription renewals. (B-11). The substantially increased cost to the Borough of providing healthcare policies to its employees argues against increasing base salary.

The Borough contends that the comparability and overall compensation exhibits support its last offer. The Borough contends that its package must be selected, placing the burden upon the PBA to make the strongest of showings on the comparables in light of the interests and welfare of the public, the lawful authority of the Borough and the financial impact on the governing unit, its residents and taxpayers.

### **Comparable Municipalities**

Given the Borough's position at the higher end of the smaller Shore communities with a high influx of summer residents, the PBA's demands are completely unwarranted due to the effect that they would have on putting the officers near the top of the maximum pay scale in the County. If the Borough's offer were adopted, its police officers' relative salary ranking would be higher compared to other municipalities, both in absolute terms and in relative terms based on population, median income and tax rate.

The Borough submits that the "comparability" criterion does not mean that all municipalities must provide the same benefits or salary increases. If this were the case, salaries and benefits would never change and all municipalities would provide the exact same salaries and benefit packages. Encompassed within the "comparability" criterion is a consideration of trends throughout the State and the nation, as well as a consideration of when "enough is enough."

The Borough contends that the recent trends in other comparable municipalities demonstrate that the PBA's demands are excessive. The Borough cites the decision of Arbitrator James Mastriani in Borough of Seaside Park and PBA Local 182, IA-2005-029. (P-10). Arbitrator Mastriani awarded increases of 4% to base salary for the three-year term of the new contract. As noted, Seaside Park is comparable to the Borough in terms of population size and demographics.

Accordingly, in similarly situated municipalities, salary increases beyond 4% are the exception and not the norm. Even though the Borough's proposal is below the 4% level, the PBA's demands are excessive and not in accordance with salary increases in comparable jurisdictions.

#### **Other Employee Groups Within the Municipality**

The salaries for this bargaining unit far exceed the salaries of other Borough employees. Comparing the 2007 salaries of department heads and other non-unionized Borough employees (P-42), only three employees – the Police Chief, Borough Administrator and Superintendent of Public Works have higher base salaries than the maximum salary of bargaining unit members in 2007. (J-13). Also, for the contracts with the other unionized employees, the Borough eliminated longevity payments for all new hires as of January 1, 2006 for the Teamsters (B-9, p. 9) and as of January 1, 2007 for Transport Union Workers (B-10, p. 12), which causes a further disparity between the police officers, who will continue to have longevity bonuses, and the other Borough employees.

#### **National Wage Trends /Private Sector Employment**

The Borough asserts that national wage trends and private sector employment demonstrate the reasonableness of its economic offer. With wages tied to the CPI in many cases nationally, the Borough's proposal more closely approximates the cost of living than

does the PBA's proposal. When the cost of health care is subtracted from the CPI because bargaining unit members do not contribute, the Borough's proposal becomes even more reasonable.

The Borough notes that I can take "arbitrary notice" of private sector wages increases compiled by the New Jersey Department of Labor. Most notably, the private sector statistics for wage increases in the private sector, for Ocean County from 2005 to 2006, increased only 3.3%, substantially below the state average of 4.6% in the private sector. (J-8, p. 3). As the Borough is located in Ocean County, this statistic is the most relevant comparison to the private sector employment figures. The slowing rate of increase in the private sector should be mirrored in the public sector and the Borough's position should be sustained.

The Borough asserts that private sector labor unions recognize that overreaching demands may cause elimination of their members' jobs. As a result, unions have modified their demands. Unions negotiating with General Motors, Ford, Chrysler, Goodyear and Verizon all accepted some form of a wage freeze. Specifically, the United Auto Workers reached a four-year agreement with General Motors, Ford and Chrysler providing a wage freeze in the first and second years of the contract, a 2.0% wage increase in the third year, and a 3.0% increase in the fourth year. The Communications Workers of America settled with Verizon for a five-year contract that provided for a wage freeze during the first year, including a \$1,600 lump-sum payment, and a 2.0% wage increase annually for the next four years of the agreement. The United Steelworkers of America's three-year contract with Goodyear provided for a three-year wage freeze, with profit sharing and cost of living adjustments. The Borough asserts that these settlements support its last offer on salaries and other economic issues.

## **The Lawful Authority of the Employer**

N.J.S.A. 34:13A-16(g)(5) requires the Interest Arbitrator to consider the “lawful authority of the employer” in determining whether the municipality or the union has proposed the more reasonable economic package. The New Jersey Local Government Cap Law (the “Cap Law”), N.J.S.A. 40A:4-45.1 *et seq.*, restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality’s ability to grant wage increases to its employees.

In enacting the Cap Law, the Legislature declared it to be “the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads.” N.J.S.A. 40A:4-45.1. The Legislature also recognized, however, that “local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents. *Id.*”

The Cap Law controls the costs of local government by prohibiting a municipality, beginning on or after June 1, 2004, from increasing its tax levy by more than 2.5% over the previous year’s tax levy, subject to certain exceptions. N.J.S.A. 40A:4-45.2. The New Jersey Supreme Court explained,

As the wording of the statute makes clear, it is the final line of appropriations in a municipal budget (less expenditures excepted from Cap consideration) which cannot exceed by more than [2.5]% the previous year’s overall appropriations diminished by that year’s Cap exclusions. The law does not preclude a municipality from increasing in excess of [2.5]% any particular line item or items which are reflected in the Borough’s total appropriations. It is the budget as a whole, rather than each component thereof, which is subject to the [2.5]% ceiling. N.J. State P.B.A., Local 29 v. Borough of Irvington, 80 N.J. 271, 281-82 (1979).

Therefore, the Cap Law does not impose a line-item-by-line-item limitation. Instead, it places a limit on the overall budget to the extent it is subject to the Cap Law. Because salary

expenditures fall within the Cap, the Legislature has already predetermined the maximum amount the Borough may increase taxes to cover police salary expenditures. N.J.S.A. 40A:4-45.3.

N.J.S.A. 40A:4-45.14 provides that a municipality may, by the adoption of an ordinance under certain circumstances, increase its final appropriations by a percentage not to exceed a 3.5% rate as specified in the law. However, the law is also clear that a municipality is not required to increase the cap to 3.5%. If an ordinance is not so approved by the governing body, then the cap limit remains at 2.5%.

Costs incurred to fund an adverse interest arbitration award must be taken into account by the municipality in determining whether overall employer budgetary appropriations exceeded the ceiling imposed by the Cap Law. Irvington, 80 N.J. 284-92; City of Atlantic City v. Laezza, 80 N.J. 255, 266 (1979). A municipality may, under extremely narrow circumstances, resort to an emergency appropriation to fund an arbitration award which exceeds the budget. The Local Budget Law explains when a municipality may make emergency appropriations. N.J.S.A. 40A:4-46 provides,

A local unit may make emergency appropriations, after the adoption of a budget, for a purpose which is not foreseen at the time of the adoption thereof, or for which adequate provision was not made therein. Such an appropriation shall be made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare or to provide temporary housing or public assistance prior to the next succeeding fiscal. N.J.S.A. 40A:4-46; See N.J.S.A. 40A:4-20 (temporary emergency appropriations).

Emergency relief, however, will not be available unless the municipality cannot foresee the need for funds at budget making time or “the need arises despite a bona fide effort to structure a reasonable budget.” Passaic v. Local Finance Board of the Department of Community Affairs, 88 N.J. 293, 303 (1982). Nevertheless, even if the municipality

qualifies for an emergency appropriation to fund an interest arbitration award, an emergency appropriation will only delay major financial disaster. Irvington, 80 N.J. 271; City of Atlantic City v. Laezza, 80 N.J. 255 (1979).

N.J.S.A. 40A:4-45.3, which sets forth exceptions to the Cap, partially exempts emergency temporary appropriations passed pursuant to N.J.S.A. 40A:4-20 “to meet an urgent situation or event which immediately endangers the health, safety or property of the residents of the municipality” and emergency appropriations passed pursuant to N.J.S.A. 40A:4-46 from the 5% Cap. Significantly, however, to the extent the aggregate yearly emergency appropriations exceed “3% of the previous year’s final current operating appropriations,” they must be included in the following year’s budget and also must be included within the following year’s permissible Cap limit. N.J.S.A. 40A-45.3(c); 40A:4-46; 40A:4-47.

Under the Local Budget Law, N.J.S.A. 40A:4-1 et seq., a local governing body possesses “the primary responsibility for allocating available resources among the various services which it chooses to provide to its inhabitants.” Laezza, 80 N.J. at 263. A municipality may not adopt a budget unless the Director of the Division of Local Finance certifies his or her approval, even when the statute permits a “self-audit.” N.J.S.A. 40A:4-10. Additionally, the Director must approve all emergency appropriations which exceed 3% of the municipality’s operating appropriations. N.J.S.A. 40A:4-49. To approve the emergency appropriation, the Director must determine that an “emergency” exists and that the proposed appropriation is “necessary.” N.J.S.A. 40A:4-49(d), (e). If the Director approves the emergency appropriation, the municipality may use funds from the next year’s Cap allowed increase during the current year. Therefore, emergency appropriations “in excess of 3% of

the Borough's budget . . . will merely operate to postpone, rather than avert, major fiscal crises." Irvington, 80 N.J. at 298.

Because funding adverse compulsory interest arbitration awards which exceed Cap through emergency appropriations merely delays fiscal disaster, municipalities will have to exercise their inherent management prerogative to determine "whether, and to what extent, police personnel or other municipal employees should be laid off, or whether budgetary appropriations for non-payroll costs should be reduced" to keep the municipal budget within the mandatory 5% Cap. Irvington, 80 N.J. at 298 (citations omitted).

Amendments to the Cap Law have narrowed the exceptions from the Cap limitation, making it increasingly more difficult for municipalities to keep budgets within the Cap. The Legislature eliminated the following exceptions from the Cap Law:

1. Cost of special or cap referendum elections;
2. Amounts offsetting losses in federal revenue sharing;
3. Purchase of police vehicles and related equipment;
4. "Additional" spending for testing of water supplies or other expenditures necessary to comply with DEP orders or permits for public water supply systems;
5. Insurance costs over that of 1985;
6. 9-1-1 system termination equipment purchased, leased or maintained;
7. Project costs in a transportation development district project agreement;
8. All budgeted solid waste related expenses;
9. State and federal mandates prior to January 1, 1991. (N.J.S.A. 40A:4-45.3).



**The Financial Impact on the Governing Unit,  
Its Residents and Taxpayers**

N.J.S.A. 34:13A-16(g)(6) requires the Interest Arbitrator to consider the respective economic offers' financial impact on the governing unit, its residents and taxpayers in determining whether the municipality or the employee representative presents the more reasonable final offer. The considerations under this factor "do not equate with a municipality's ability to pay." Hillsdale, 137 N.J. at 86. The New Jersey Supreme Court emphasized that "[i]t is not enough to simply assert that the public entity involved should merely raise taxes to cover the costs of the public interest arbitration award." Id. (quoting 263 N.J. Super. at 188 n.16). Moreover, the municipality does not carry the burden of proving its financial inability to meet the union's final offer. Id.

The Borough asserts that its economic package considers the financial impact on the governing unit, its residents and taxpayers because it takes into account the State's bleak economic condition. The economy impacts upon the Borough's ability to raise taxes to pay the PBA's economic demands. The effect of granting an economic benefit in excess of that proposed by the Borough will impact on the Borough's attempt to minimize a projected increasing tax rate, contrary to the statutory criteria requiring the Interest Arbitrator to consider the financial impact on the governing unit, its residents and taxpayers.

In its amendments to the Interest Arbitration statute, the Legislature specifically requires the Interest Arbitrator to consider how the award will impact on the tax rate and the ability of the municipality to "(a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget."

Based on the arguments set forth above, the Borough asserts that awarding any economic package beyond its proposal would have a detrimental financial impact on the governing unit, its residents and taxpayers, and therefore the Interest Arbitrator should award the Borough's economic offer as is.

### **The Consumer Price Index/Cost of Living**

N.J.S.A. 34:13A-16(g)(7) requires the Interest Arbitrator to consider the consumer price index ("CPI") in determining whether the municipality or the employee representative has proposed the more reasonable economic package. The CPI measures a wage earner's purchasing power. When a wage earner receives a salary increase equaling the CPI increase, the wage earner theoretically will be able to continue to maintain his or her standard of living. Based on the above, the Borough contends that in light of the present and projected cost of living figures, the Borough's proposal is more realistic and reasonable than the Association's economic demands or any package in between, and should be awarded as is.

### **Continuity and Stability of Employment**

N.J.S.A. 34:13A-16(g)(8) requires an Interest Arbitrator to consider the "continuity and stability of employment" in determining whether the municipality or the employee representative presents the more reasonable economic package. If the Interest Arbitrator were to award an economic benefit in excess of that offered by the Borough, the ability of the Borough to maintain the continuity and stability of present levels of employment would be hampered.

In both the public and private sectors, the economy is slowing down. When composing its economic position, the Borough took the continuity and stability of employment into consideration, since its goal is to maintain as much as possible a stable level of governmental services. To the contrary, the goal of the PBA is to obtain the greatest

economic advantages for its members. The PBA presented no information concerning the continuity and stability of employment. An award in excess of that offered by the Borough could very well lead to a loss of jobs in the Borough.

Based on the above, the Borough contends that consideration of the criterion of continuity and stability of employment favors an award of its economic proposal.

### **Non-Economic Items**

The Borough submits that the PBA's non-economic proposals are left to the discretion of the Arbitrator. It should be noted, however, that the Association's demand for an increase in time off for PBA officers from the current one hundred twenty (120) hour annual provision to two hundred (200) hours per annum is apparently based on the potential increased need of a PBA official due to his position at the State PBA. The need for PBA time off has always been accommodated by the department, but to argue for an increased amount of time off in a contract, for a position that likely is only of temporary duration, is not appropriate. Moreover, paid time off for the attendance at a national or state convention is already provided for under the terms of N.J.S.A.40A:14-177 and need not be embodied in a contract award.

### **Conclusion**

The Borough submits that these are unusual times that call for what some might consider unusual fiscal measures. The country is headed into a nationwide recession. The State is faced with an unprecedented budget shortfall. The full fiscal impact of these circumstances on municipalities and their residents will not be known for some time. This is not the atmosphere to blindly grant salary increases based upon the "going rate", although the PBA's salary proposal exceeds this figure. It is the time to grant reasonable increases such as those proposed by the Borough and to implement cost containment measures.

The Borough submits that the PBA's presentation fails to meet its burden of proof. The PBA failed to produce any evidence regarding any of its demands to meet the statutory criteria. The PBA's failure to present evidence in support of the statutory criteria and established case law precludes the Interest Arbitrator from legally considering any of the PBA demands.

The Borough maintains that its economic package more reasonably reflects the statutory criteria than the PBA's economic package. It considers the interests and welfare of the public, the officer's overall compensation package, salaries and benefits of other employees including police employees in nearby communities, public sector employees in New Jersey and nationwide, and private sector employees in New Jersey and nationwide.

The Borough submits that its package also considers the impact of the "Cap" law on its ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers in light of modest increases in the cost of living, the relatively "tight" budget appropriations leaving little room for unanticipated expenditures and the withering of revenue sources to fund budget increases, exacerbating the tax rate problem faced by the Borough. Finally, the Borough maintains that its last offer takes into account its impact on the officers' continuity and stability of employment.

The Borough asks that I award its last offer on all economic and non-economic issues included in its last offer.

## Discussion

The parties presented testimony and more than 50 documentary exhibits totaling hundreds of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. Each criterion must be considered and those deemed relevant must be explained. The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or

condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals.

I shall award a four-year agreement as proposed by the Borough and the PBA. The duration of the new four-year agreement shall be January 1, 2007 to December 31, 2010.

I shall award the following changes and increases to the salary schedule:

- a. Effective January 1, 2007, all steps and ranks shall be increased by 4%.
- b. Effective January 1, 2008, all steps and ranks shall be increased by 4%.
- c. Effective January 1, 2009, all steps and ranks shall be increased by 4.25%.
- d. Effective January 1, 2010, all steps and ranks shall be increased by 4.25%.

I shall award the Borough's proposal that all full-time members of the bargaining unit shall contribute twenty dollars (\$20.00) per month for individual coverage and forty dollars (\$40.00) per month for dual or family coverage. This shall be effective July 1, 2008. I shall award the PBA's proposal concerning Officer-In-Charge Pay, Grievance Procedure, Bereavement Leave, and Disciplinary Information. Finally, I shall incorporate the parties' agreement regarding personnel files in the award. All other proposals of the Borough and the PBA are denied.

#### **Cost of Salary Proposals**

The current bargaining unit (at the close of the record) includes sixteen Patrol Officers, 5 Sergeants, 2 Lieutenants and 1 Captain. The total base pay salary in 2006 is \$1,864,591. The base salary for calculation purposes is the salary that a bargaining unit member is paid in 2006. I note that eleven of the sixteen officers are at the maximum step on the salary schedule in 2007 with five officers moving through the steps.

The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making less than 50% of the maximum step officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculations for 2007, 2008, 2009 and 2010 do not include the cost of increments.

#### 2007

The PBA proposed a 5% across-the-board increase to be effective January 1, 2007. The cost of the PBA proposal (excluding increments) in 2007 is \$93,230. The total cost of the PBA's proposed salary increase in 2007 is \$1,957,820.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2007. The cost of the 3% increase in 2007 (excluding increments) is \$55,938. The total cost of the Borough's proposed salary increase in 2007 is \$1,920,529.

I awarded a 4% across-the-board salary increase effective January 1, 2007. The cost of the 4% salary increase in 2007 (excluding increments) is \$74,584. The total cost of my award in 2007 is \$1,939,175. The cost of the awarded salary increase in 2007 is \$18,646 more than the Borough's proposed salary increase in 2007 and \$18,646 less than the PBA's proposed salary increase in 2007.

## **2008**

The PBA proposed a 5% across-the-board increase to be effective January 1, 2008. The cost of the PBA proposal (excluding increments) in 2008 is \$97,891. The total cost of the PBA's proposed salary increase in 2008 is \$2,055,711.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2008. The cost of the 3% increase in 2008 (excluding increments) is \$57,616. The total cost of the Borough's proposed salary increase in 2008 is \$1,978,144.

I awarded a 4% across-the-board salary increase effective January 1, 2008. The cost of the 4% salary increase in 2008 (excluding increments) is \$77,567. The total cost of my award in 2007 is \$2,016,741. The cost of the awarded salary increase in 2008 is \$19,951 more than the Borough's proposed salary increase in 2008 and \$20,324 less than the PBA's proposed salary increase in 2008. In addition, I awarded the Borough's proposal for health care contributions to be effective July 1, 2008. This contribution for six months in 2008 will effectively reduce the cost of the awarded salary increases to less than 4%.

## **2009**

The PBA proposed a 5% across-the-board increase to be effective January 1, 2009. The cost of the PBA proposal (excluding increments) in 2009 is \$102,786. The total cost of the PBA's proposed salary increase in 2009 is \$2,158,496.

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2009. The cost of the 3% increase in 2009 (excluding increments) is \$59,344. The total cost of the Borough's proposed salary increase in 2007 is \$2,037,488.

I awarded a 4.25% across-the-board salary increase effective January 1, 2009. The cost of the 4.25% salary increase in 2009 (excluding increments) is \$85,711. The total cost



of my award in 2009 is \$2,102,453. The cost of the awarded salary increases in 2009 is \$26,367 more than the Borough's proposed salary increase in 2009 and \$17,075 less than the PBA's proposed salary increase in 2009. In 2009, the Borough will realize the savings from the health care contributions for the full twelve months. These contributions in 2009 will effectively reduce the cost of the awarded salary increases to around 4% for officers making single contributions at \$20 monthly and to approximately 3.75% for officers making dual contributions at \$40 monthly.

### **2010**

The PBA proposed a 5% across-the-board increase to be effective January 1, 2010. The cost of the PBA proposal (excluding increments) in 2010 is \$107,924. The total cost of the PBA's proposed salary increase in 2010 is \$2,266,421

The Borough proposed a 3% across-the-board salary increase to be effective January 1, 2010. The cost of the 3% increase in 2010 (excluding increments) is \$61,125. The total cost of the Borough's proposed salary increase in 2010 is \$2,098,613.

I awarded a 4.25% across-the-board salary increase effective January 1, 2010. The cost of the 4.25% salary increase in 2010 (excluding increments) is \$89,354. The total cost of my award in 2010 is \$2,191,807. The cost of the awarded salary increase in 2010 is \$28,229 more than the Borough's 2010 proposed salary increase and \$18,570 less than the PBA's proposed salary increase.

### **Interests and Welfare of the Public**

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute

specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

*The interests and welfare of the public* require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide the appropriate level of governmental services and to provide those services in the most cost effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Police Officer is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Police Officers are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Police Officer from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

“The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the ‘unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State’ and the life threatening

dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony.”

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC Docket No. IA-98-91-14, page 45.)

I shall discuss the open issues with respect to the interests and welfare of the public factor.

### **Term of Agreement**

This is effectively a stipulation since both parties proposed a four-year Agreement. I shall award a four-year agreement to commence on January 1, 2007 and continuing to December 31, 2010.

### **Salary**

The Borough proposed a 3% across-the-board salary increase in 2007, 2008, 2009 and 2010. The PBA proposed a 5% across-the-board salary increase in 2007, 2008, 2009 and 2010. Obviously, the City and the PBA salary positions are not close. They are 2% apart in each year of the new CBA.

The PBA submitted salary data showing the average salary increases in fifteen Monmouth County and Ocean County jurisdictions. This salary data shows average base salary increases of 4.02% in 2007, 4.03% in 2008 and 4.11% in 2009. A review of the PBA's salary data for 2007 shows that eleven of the fourteen jurisdictions reported a 4% salary increase in 2007 with Avon showing a 3.75% salary increase, Manchester Township showing a 4.5% salary increase and Brielle showing a 4.1% salary increase. A review of the PBA's salary data for 2008 shows that seven of the eleven jurisdictions reported a 4% salary

increase in 2008 with Sea Girt and Brielle showing a 3.9% salary increase, Bradley Beach showing a 4.3% salary increase and Manasquan showing a 4.25% salary increase. A review of the PBA's salary data for 2009 shows that three of the seven jurisdictions reported a 4% salary increase in 2009 with Sea Girt showing a 3.9% salary increase, Bradley Beach showing a 4.5% salary increase and Manasquan showing a 4.25% salary increase.

The PBA's salary data on annual salary increases in 2007, 2008 and 2009 is supportive of the awarded salary increases. This salary data is not supportive of the PBA's salary proposal nor is it supportive of the Borough's salary proposal. The awarded salary increases average 4.125%. When the value of the health care contribution to the Borough is factored in, the annual increase is closer to 4%.

The Borough contends that the recent trends in other comparable municipalities demonstrate that the PBA's demands are excessive. The Borough cites the decision of Arbitrator James Mastriani in Borough of Seaside Park and PBA Local 182, IA-2005-029. (P-10). Arbitrator Mastriani awarded increases of 4% to base salary for the three-year term of the new contract. The Borough cited Seaside Park as a comparable community in terms of population size and demographics. The Borough asserted that salary increases beyond 4% are the exception and not the norm. The Borough's arguments are effective arguments against the awarding of the PBA's proposed 5% annual salary increases. The Borough's reliance on Seaside Park is supportive of the awarded salary increases which are consistent with the awarded increases in Seaside Park when the savings from the health care contribution provide an offset against the additional  $\frac{1}{4}$  of 1% in 2009 and 2010.

I agree with the Borough that the PBA's last offer exceeds the reported average salary increases for police officers. However, the Borough's last offer on salary averages 3%

annually. This is substantially less than the salary data in the record and is substantially less than the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements.

The PERC data shows that the average salary increase in 2006 for awards issued in 2006 was 4.09% and the average salary increase in 2006 for voluntary settlements reached in 2006 was 3.95%. The PERC data shows similar results in 2004 and 2005. The 2007 PERC data shows that the average salary increase in 2007 for awards issued in 2007 was 3.97% and the average salary increase in 2007 for voluntary settlements reached in 2007 was 3.77%. The PERC salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer. The PERC salary data is more consistent with the terms of my award.

The PBA contends that the maximum patrol officers' salary is significantly behind other comparable municipalities and deserving of a salary increase above the County and state-wide average salary increases. I have awarded salary increases that are consistent with County and state-wide averages in 2007 and 2008. I have awarded salary increases in 2009 and 2010 that are in total, approximately  $\frac{1}{2}$  of 1% of the average salary increases in the record and reported state-wide. This is intended to offset the cost associated with the health care contribution in 2008, 2009 and 2010.

The PBA submitted data from selected departments in Monmouth and Ocean County that it contends shows a disparity between maximum step officers in the Borough and officers in the comparison jurisdictions. The PBA contends that this data shows the Borough officers at maximum step are, on average, \$5,700 below other officers at maximum. This data, at first blush, appears to be supportive of an above average salary increase at maximum

for the Borough's officers. However, closer review shows that the PBA's data must be measured against other salary data including longevity, the number of steps to maximum and comparisons to salary data from other departments included in this record.

Sea Girt is one of the departments cited by the PBA. The PBA correctly notes that the maximum patrol salary in Sea Girt is \$86,300. This is \$6,300 higher than the salary in the Borough. However, Sea Girt does not have additional longevity. The longevity was "rolled" into base in a prior CBA. The Borough has a 12% maximum longevity which, when applied to the maximum salary, increases the maximum salary in the Borough to \$89,600, more than \$3,300 higher than the maximum in Sea Girt. (B-3).

The PBA cites Ocean County Prosecutor's Detectives, with a maximum salary of \$81,112 in 2006, in support of its argument. However, the Prosecutor's Detectives receive a much lower longevity of 6.5% at 25 years whereas Borough police officers receive 12% longevity at 25 years. The Point Pleasant Beach maximum patrol officers' salary in 2006 is more than \$3,000 higher when the higher longevity is factored into the salary. The Ocean County Sheriff's Officers have the same 6.5% longevity with a maximum salary of \$78,538 (Senior Officer) in 2006. This places the Sheriff's Officer salary below the salary of the Point Pleasant Beach officer. In addition, Point Pleasant Beach police officers reach maximum at least two years before Detectives in the Ocean County Prosecutor's Office. Moving to maximum faster means that the Point Pleasant Beach officer enjoys higher cumulative earnings while moving through the steps to maximum. This means as much as \$10,000 more if you move to maximum at the beginning of your seventh year as opposed to reaching maximum at the beginning of your ninth year. (P-6 & P-7).

Comparison to police officers in Point Pleasant Borough, a contiguous community, shows a higher maximum salary of approximately \$2,500 but 2% lower longevity after 25 years service. This 2% difference narrows the gap considerably. (P-9).

Manasquan is another example of a municipality with a maximum in 2006 (\$79,634) which is similar to the \$80,004 maximum in Point Pleasant Beach. Again, officers in the Borough enjoy 12% longevity after 25 years whereas officers in Manasquan enjoy 9% maximum longevity. The additional 3% longevity places the Point Pleasant Beach maximum salary approximately \$2,500 higher than the maximum salary in Manasquan. (P-4).

The Spring Lake Heights maximum salary in 2006 was \$79,172. This is nearly a \$1,000 less than the maximum in Point Pleasant Beach. In addition, the maximum longevity in Spring Lake Heights is 9%. This means that the maximum patrol officer salary in Point Pleasant Beach is approximately \$3,500 higher than Spring Lake Heights. (B-1).

The Seaside Park maximum salary in 2006 was \$76,436. This is more than \$3,500 less than the maximum salary in Point Pleasant Beach. In addition, the maximum longevity in Seaside Park is 2% meaning that the maximum salary in Point Pleasant Beach is more than \$11,000 higher than the maximum salary in Seaside Park. (P-11).

The PBA salary data is accurate and does demonstrate that certain departments in Ocean and Monmouth County have a higher maximum salary than officers in Point Pleasant Beach. However, when all of the salary data in the record is analyzed, it shows that officers at the maximum step in Point Pleasant Beach also enjoy higher maximum salaries than their peers in many other jurisdictions. When all of this data is combined, it shows that the current maximum salary in Point Pleasant Beach is competitive and the salary increases awarded in 2007, 2008, 2009 and 2010 will maintain the maximum salary in relation to other

jurisdictions. An arbitrator, when reviewing salary data submitted by the parties, invariably finds that each party submits salary data supportive of their own position, and that such submissions, as in this case, effectively balance each other out.

Accordingly, after reviewing all of the salary data in the record, I conclude that there is no basis to find that any further adjustments beyond the awarded salary increases are justified.

In summary, I find that the terms of my award satisfy the requirements of the interests and welfare of the public criterion to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. Reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. I find that the interests and welfare of the public require a stable and experienced police force and that the terms of my award on salary will maintain the Borough's ability to recruit and retain qualified and experienced police officers consistent with the requirements of this factor.

**Comparison of The Wages, Salaries, Hours  
and Conditions of Employment**

Comparisons of the wages, salaries, hours and conditions of employment of the Borough's police officers are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general, 2) in public employment in general, and 3) in public employment in the same or similar jurisdictions. I shall discuss these in order.

The first part, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. It is well established that there are no easily identified private sector police officers who perform



services similar to those performed by Borough police officers. Neither party submitted salary data on this sub-factor since none exists. A police officer position is a uniquely public sector position that does not lend itself to private sector comparisons. I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See Page 20). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private sector comparisons. The parties did not submit extensive current data on this sub-factor. The Borough submitted data from selected contracts in the private sector. The PBA offered J-8, a publication distributed by the Public Employment Relations Commission. This is a publication of the New Jersey Department of Labor which shows changes in average annual wages between 2005 and 2006 for jobs covered by unemployment insurance. The PBA notes that Sheet 2 shows that the annual average wages in the "Total Private Sector" show a 4.6% increase. The Borough cites Sheet 3 of J-8 which shows that average annual wages increased by 3.3% in Ocean County. I find this data is entitled to little weight given the method of its collection. The calculations in the report are obtained by dividing the total wages paid by covered by private sector employers by the number of jobs reported by those employers at their work sites. The County data ranges from a low of minus five-percent (-5%) in Warren County to a high of 7.9% in Somerset County. The 4.6% increase cited by the PBA is an average of the twenty-one counties in the State. Surely, the 7.9% increase in Somerset County or the .02% increase in Passaic County should not influence the outcome of negotiations or be given significant weight in an arbitration matter.

The United States Department of Labor, Bureau of Labor Statistics (“BLS”), publishes the *Employment Cost Index*, a report showing the increase in total compensation costs in the various sectors. I take arbitral notice of the March 2008 report which shows an increase of 3.2% in private sector compensation costs for the period ending March 2008. The overall compensation increase for civilian workers was 3.2% for the period ending March 2008 and 3.6% for the period ending March 2007. This report also shows an increase of 3.5% for state and local government workers for the period ending March 2008 and 3.8% for the period ending March 2007. The report shows that increases have been higher in the public sector in 2007 and 2008.

The salary increases that I have awarded are .6% higher than the reported 3.6% and 3.2% average increases received by private sector employees in 2007 and 2008 and .35% higher than average of public sector increases in 2007 and 2008.

The current data on average salary increases in private sector employment in general shows that the PBA’s proposed salary increases exceed average salary increases in the private sector generally. The Township’s proposed salary increases are below the average increases in the private sector in 2007 and 2008. I find that my award, while somewhat higher than private sector and public sector settlements in general, is acceptable when measured against the totality of the terms of the award. This sub-factor, as evidenced by the limited evidence submitted by the parties, is not entitled to significant weight.

I shall now address internal comparability with other Borough employees. The Borough asserts that salaries for this bargaining unit far exceed the salaries of most other Borough employees with only three employees — the Police Chief, Borough Administrator and Superintendent of Public Works — having higher base salaries than the maximum salary of bargaining unit members. (J-13). The Borough also points out that it eliminated longevity

payments for all new hires as of January 1, 2006 for the Teamsters (B-9, p. 9) and as of January 1, 2007 for Transport Union Workers (B-10, p. 12), which causes a further disparity with police officers, who will continue to have longevity bonuses.

The PBA cites the Borough's agreement with the Transport Workers Union, which represents the Borough's blue collar employees, which provides for a minimum of a 5.5% salary increase in 2007, 2008 and 2009. The PBA also cites the Borough's 2004-2007 CBA with Teamsters Local 469, which provides for a 5.5% salary increase in 2007.

The Borough's settlement with other bargaining units is not supportive of its last offer in this matter. There is no basis to offer a 3% increase to police officers after voluntarily settling for annual increases of 5.5% with other bargaining units. However, these higher salary increases included a major concession regarding the "grandfathering" of longevity benefits to current employees. Thus, newly hired Borough employees will no longer receive longevity benefits. The Borough is also seeking the elimination of longevity for new hires but it is only offering 3% annual salary increases. I have denied the Borough's proposal regarding longevity. This is a major difference which favors the awarded salary increases.

Accordingly, I conclude that internal comparability, while higher than the awarded salary increases, is supportive of the lower salary increases given the concessions regarding longevity by the Borough's other employee organizations.

The next sub-factor calls for comparisons of the wages, hours and conditions of employment of employees performing the same or similar services in the same or similar comparable jurisdictions. These comparisons are made to police officers in the same or similar jurisdictions.

As I discussed under the *interests and welfare of the public* criterion, the PBA submitted salary data showing the average salary increases in fifteen Monmouth County and Ocean County jurisdictions to be 4.02% in 2007, 4.03% in 2008 and 4.11% in 2009. Eleven of the fourteen jurisdictions reported a 4% salary increase in 2007 with Avon showing a 3.75% salary increase, Manchester Township showing a 4.5% salary increase and Brielle showing a 4.1% salary increase. The 2008 data shows that seven of the eleven jurisdictions reported a 4% salary increase in 2008 with Sea Girt and Brielle showing a 3.9% salary increase, Bradley Beach showing a 4.3% salary increase and Manasquan showing a 4.25% salary increase. The 2009 data shows that three of the seven jurisdictions reported a 4% salary increase in 2009 with Sea Girt showing a 3.9% salary increase, Bradley Beach showing a 4.5% salary increase and Manasquan showing a 4.25% salary increase.

As stated above, the data on annual salary increases in 2007, 2008 and 2009 is supportive of the awarded salary increases. This salary data is not supportive of the PBA's salary proposal nor is it supportive of the Borough's salary proposal. The awarded salary increases average 4.125%. When the value of the health care contribution to the Borough is factored in, the annual increase is closer to 4%.

Again, as discussed under the *interests and welfare* criterion, the Borough relied on the decision of Arbitrator Mastriani in Borough of Seaside Park and PBA Local 182 where the arbitrator awarded increases of 4% to base salary for the three-year term of the new contract. The Borough cited Seaside Park as a comparable community in terms of population size and demographics. The Borough asserted that salary increases above 4% are the exception and not the norm. The Borough's reliance on Seaside Park is supportive of the awarded salary increases which are consistent with the awarded increases in Seaside Park

when the savings from the health care contribution provide an offset against the additional ¼ of 1% in 2009 and 2010.

As discussed above, I concluded that the PBA's last offer of 5% annual salary increases exceeded the reported average salary increases for police officers and the Borough's last offer of 3% annually was significantly below reported average salary increases as well as significantly below the 5.5% annual salary increases it negotiated with other Borough employee organizations. The Borough's salary proposal is substantially less than the salary data in the record and is substantially less than the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements. Conversely, the PBA's proposal is substantially more than the salary data in the record and is substantially more than the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements

The PERC data shows that the average salary increase in 2006 for awards issued in 2006 was 4.09% and the average salary increase in 2006 for voluntary settlements reached in 2006 was 3.95%. The PERC data shows similar results in 2004 and 2005. The 2007 PERC data shows that the average salary increase in 2007 for awards issued in 2007 was 3.97% and the average salary increase in 2007 for voluntary settlements reached in 2007 was 3.77%. The PERC salary data is not supportive of the PBA's last offer nor is it supportive of the Borough's last offer. The PERC salary data is more consistent with the terms of my award.

A common benchmark measure of comparing police officer salaries is the maximum salary. In my discussion on *interests and welfare of the public*, I concluded that the maximum salary for Point Pleasant Beach police officers was competitive when total

compensation was taken into account. The PBA contends that the maximum patrol officer salary is significantly behind other comparable municipalities and deserving of a salary increase above the County and state-wide average salary increases.

The PBA submitted data from selected departments in Monmouth and Ocean County that it contends shows a disparity between maximum step officers in the Borough and officers in the comparison jurisdictions. The PBA contended that this data shows the Borough officers at maximum step are, on average, \$5,700 below other officers at maximum. After reviewing all of the documents in the record, I concluded that the maximum salary in Point Pleasant Beach, when measured against other salary data including longevity, the number of steps to maximum and comparisons to salary data from other departments, was competitive with other departments:

1. Sea Girt is one of the departments cited by the PBA. The PBA correctly notes that the maximum patrol officer salary in Sea Girt is \$86,300. This is \$6,300 higher than the maximum salary in the Borough. However, Sea Girt does not have additional longevity. The longevity was “rolled” into base in a prior CBA. The Borough has a 12% maximum longevity which, when applied to the maximum salary, increases the maximum salary in the Borough to \$89,600, more than \$3,300 higher than the maximum in Sea Girt. (B-3).
2. The PBA cites Ocean County Prosecutor’s Detectives, with a maximum salary of \$81,112 in 2006, in support of its argument. However, the Prosecutor’s Detectives receive a much lower longevity of 6.5% at 25 years whereas Borough police officers receive 12% longevity at 25 years. The Point Pleasant Beach maximum patrol officer salary in 2006 is more than \$3,000 higher when the higher longevity is factored into the salary.
3. The Ocean County Sheriff’s Officers have the same 6.5% longevity with a maximum salary of \$78,538 (Senior Officer) in 2006. This places the Sheriff’s Officer salary below the salary of the Point Pleasant Beach officer. In addition, Point Pleasant Beach police officers reach maximum at least two years before Detectives in the Ocean County Prosecutor’s Office. Moving to maximum faster means that the Point Pleasant Beach officer enjoys higher cumulative earnings while moving through the steps to maximum. This means as much as \$10,000 more if you move to maximum at the beginning of your seventh year as opposed to reaching maximum at the beginning of your ninth year. (P-6 & P-7).

4. Comparison to police officers in Point Pleasant Borough, a contiguous community, shows a higher maximum salary of approximately \$2,500 but 2% lower longevity after 25 years service. This 2% difference narrows the gap considerably. (P-9).
5. Manasquan is another example of a municipality with a maximum salary in 2006 of \$79,634 which is similar to the \$80,004 maximum in Point Pleasant Beach. Again, officers in the Borough enjoy 12% longevity after 25 years whereas officers in Manasquan enjoy 9% maximum longevity. The additional 3% longevity places the Point Pleasant Beach maximum salary approximately \$2,500 higher than the maximum salary in Manasquan. (P-4).
6. The Spring Lake Heights maximum salary in 2006 was \$79,172. This is nearly a \$1,000 less than the maximum in Point Pleasant Beach. In addition, the maximum longevity in Spring Lake Heights is 9%. This means that the maximum patrol officer salary in Point Pleasant Beach is approximately \$3,500 higher than Spring Lake Heights. (B-1).
7. The Seaside Park maximum salary in 2006 was \$76,436. This is more than \$3,500 less than the maximum salary in Point Pleasant Beach. In addition, the maximum longevity in Seaside Park is 2% meaning that the maximum salary in Point Pleasant Beach is more than \$11,000 higher than the maximum salary in Seaside Park. (P-11).

As discussed above, the PBA salary data shows that certain departments in Ocean and Monmouth County have a higher maximum salary than officers in Point Pleasant Beach. However, when all of the salary data in the record is analyzed, it shows that officers at the maximum step in Point Pleasant Beach receive a higher maximum salary than their peers in many other jurisdictions. I concluded that when all of the data in the record is included, it shows that the current maximum salary in Point Pleasant Beach is competitive and that the salary increases awarded in 2007, 2008, 2009 and 2010 will maintain the maximum salary in relation to other jurisdictions.

The salary data in the record is consistent with the terms of my award providing for a 4% salary increase in 2007 and 2008 followed by a 4.25% salary increase in 2009 and 2010 with an offset against the salary increases provided by the award of health care contributions effective July 1, 2008. This sub-factor is entitled to great weight. I find that the external

comparability data detailing salary increases in other municipalities in Monmouth County and throughout the State is the most relevant factor in this proceeding. After all, this is salary data for other police officers in Monmouth County and more specifically eastern Monmouth County. This data is also consistent with the summary data provided by PERC on the average salary increases achieved by the parties voluntarily and by award.

#### **Other Issues**

I shall now address the other issues. A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of demonstrating a need for such change. I shall apply that principle in my analysis of each issue in dispute. While I am required to evaluate the merits of the disputed issues individually, I am guided by criterion N.J.S.A. 34:13A-16(8) that directs the consideration of factors which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment. An element that must be considered is the totality of the changes to be made to an existing agreement. This is consistent with the statutory requirement that an arbitrator determine whether the total economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision to award or deny any individual issue must be balanced with consideration of the reasonableness of each issue in relation to the reasonableness of the terms of the entire award.

#### **Health Care Contributions**

I awarded the Borough's proposal that all full-time members of the bargaining unit shall contribute twenty dollars (\$20.00) per month for individual coverage and forty dollars (\$40.00) per month for dual or family coverage. This shall be effective July 1, 2008.



Salary and health care are often linked in bargaining. Modifications on health care influence the level of salary increases. These concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance coverage is the most significant component of employee benefits. The costs of these health insurance benefits are rising at a much higher rate than inflation and salary increases. Health insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee.

Under the interest arbitration statute, health insurance must be treated as an economic issue. The increased cost of providing these benefits cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit to an employee that is more costly to provide.

Negotiations regarding health insurance are now primarily directed to cost containment issues. Negotiations that included improved health benefits, particularly full retiree health benefits, almost always include some commensurate major concession by a labor organization. In the past, unions have been resistant to both a reduction in plan options (elimination of Traditional Plan) and to premium cost sharing provisions (in any form) for medical insurance. However, this is no longer the case. Tens of thousands of State employees have seen the elimination of the Traditional Plan as well as premium cost sharing provisions. Employees in many counties are now sharing in the cost of health insurance

premiums and a significant number of municipalities have negotiated both reduced plan options and health insurance premium cost sharing.

The premium cost sharing agreements include fixed dollar biweekly payments (with cap & without cap); obligation to pay the difference between a POS Plan and a Traditional Plan; single only coverage in Traditional Plan with full payment for dependent coverage; elimination of Traditional and limitation to POS Plan only for new hires; cash incentive to switch to lower priced health plan; 50/50 sharing between employer and employee for the increased cost of health insurance premiums (often with cap); bi-weekly contributions based on a salary range; percentage contribution of full cost of health insurance; full payment of dependent coverage in Traditional Plan; employee payment of 50% of annual increase in dependent coverage; declining percentage contribution ranging from 20% upon initial employment declining to no cost beginning with 13<sup>th</sup> year of employment; payroll deduction with or without a 125 Plan (allowing pre-tax payments for health care contributions); financial incentives to migrate to lower cost health plans; and employee financial incentives for “opting out” of employer provided health insurance.

In addition to the above, I take arbitral notice of the recent settlements and awards that include health care contributions: (1) Mahwah Township & PBA Local 143: Bi-weekly health care contributions of \$20 effective January 1, 2008; \$25 effective January 1, 2009; and \$40 effective January 1, 2010; (2) Holland Township & PBA Local 188: Effective January 1, 2007, all employees shall contribute \$1,000 annually toward the cost of health insurance; (3) S. Bound Brook & PBA Local 148 & SOA: Effective August 1, 2007, all new employees shall contribute \$25 per month for health insurance; (4) Tinton Falls & PBA Local 251: Effective August 1, 2007, employees will contribute 1% of their annual base wage for medical benefits; (5) Somerset County Sheriff's Office & PBA Local 177: Effective July 1,

2007, employees with salaries above \$50,000, 1% of salary between 50K and 80K; employees with salaries above \$80,000, 1.5% of salary above 50K; employees with salaries above \$100,000, 2% of salary above 50K; (6) River Edge Borough & PBA Local 201 & SOA: Effective January 1, 2008, all officers shall contribute \$20 biweekly for health benefits; (7) Haddon Heights Borough & PBA Local 328: Effective January 1, 2008, all employees shall contribute 1% of their base wages to the employer for Health Care Benefits; (8) East Orange & FOP Lodge 111: Effective January 1, 2009, monthly co-payments for health insurance shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; (9) East Orange & FMBA Local 23 & SOA: Effective January 1, 2009, monthly co-payments for health insurance shall be \$40 for single, \$45 for H/W & P/C and \$50 for family; (10) Borough of Palmyra & FOP Lodge 2: Effective January 1, 2010, \$30 monthly copay for health insurance; (11) Colts Neck Township & PBA Local 333: Effective January 1, 2008, all employees shall contribute 1% of the base wage for health insurance; (12) Rutgers University & FOP Lodge 164: Effective January 1, 2007, employees shall contribute 1.5% of wages for health insurance; (13) County of Warren & FOP Lodge 171: B-weekly contributions effective March 1, 2008:

	<b>\$19 - \$35K</b>	<b>\$35 - \$60K</b>	<b>\$60 - \$85K</b>	<b>\$85 +</b>
Single	\$6.00	\$14.00	\$20.00	\$28.00
Parent/Child	\$9.00	\$18.00	\$28.00	\$39.00
H/W	\$12.00	\$23.00	\$34.00	\$44.00
Family	\$15.00	\$30.00	\$42.00	\$57.00
Parent/Children	\$15.00	\$30.00	\$42.00	\$57.00

(14) Hillside Township & FOP Lodge 160: Effective July 1, 2010, employees will contribute \$50 per month toward the cost of their health benefits; (15) Edison Township & IAFF Local 1197: effective January 1, 2009, employees in Traditional Plan shall make monthly contributions of \$30/single, \$33/H&W, \$36/P&C and \$40/Family; (16) Borough

of Mountainside & PBA Local 126: Effective January 1, 2008, all officers shall contribute \$40 monthly for health insurance; (17) Township of Moorestown & Fop Lodge 109 & SOA: Effective January 1, 2007, employees who elect to remain in the Traditional Plan shall pay 33% of the difference in premiums for the next costly health plan option; (18) Borough of Ringwood & PBA 247: Employees who elect to remain in the Traditional Plan or Select 20 Plan shall pay a premium equal to the difference between the cost of the plan chosen and the cost of the Aetna Plan; (19) City of Long Branch & IAFF Local 1197: Employees who elect to remain in the Traditional Plan shall contribute \$300 per month for such coverage; (20) Upper Freehold Township & IAFF Local 4306: Effective January 1, 2006, all new employees shall pay 15% of the cost of dependent coverage; (21) Mercer County & PBA Local 167: Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (22) Haddonfield Borough & PBA Local 128: Effective January 1, 2007, employees shall contribute \$50 monthly to the cost of prescription drug benefits for dependents; (23) Mercer County & PBA Local 167 (SOA): Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (24) Borough of Spring Lake & PBA Local 50: Effective January 1, 2007, the annual health insurance contribution shall be increased to \$750; (25) Egg Harbor Township & PBA Local 77: effective January 1, 2007, employees shall contribute 15% of dependent health care premiums; (26) Morristown & PBA Local 43: Effective January 1, 2007, new employees shall contribute 10% of the dependent health care premiums; (27) Hammonton & PBA Local 77: Effective January 1, 2007, all employees shall contribute 5% of the dependent health care premiums; (28) Mercer County Sheriff's Office & FOP Lodge 140

(SOA): Effective January 1, 2007, employees with single coverage shall contribute \$19 per pay period for medical insurance and employees with dual coverage shall contribute \$24 per pay period for medical insurance; (29) Borough of Keyport & PBA Local 223: Effective January 1, 2004, employees shall contribute \$20 biweekly for health insurance; (30) Morris County Sheriff's Office and Sheriff's Officers SOA: Effective January 1, 2008, employees shall contribute 1.2% of the employee's annual salary or 6% of the selected benefit cost not to be reduced below the minimum contribution level of either \$300 annually for employees with dependent coverage and \$200 annually for single coverage.

In consideration of the above comparability data, I conclude that effective July 1, 2008, bargaining unit members with employee only health insurance shall contribute \$20 monthly and bargaining unit members with dual coverage health insurance; i.e., employee and spouse; parent and child; and full family shall contribute \$40 monthly. The Borough shall implement a 125 plan for tax purposes.

#### **Longevity**

The Borough proposes that the longevity provisions be modified to read as follows:

Beginning 5 through 8 years .....	2% of salary
Beginning 9 through 13 years .....	4% of salary
Beginning 14 through 18 years .....	6% of salary
Beginning 19 through 24 years .....	8% of salary
Beginning 25 years .....	10% of salary

In addition, the Borough proposes that the longevity payment shall be calculated only on salary up to a cap of \$45,000. Salary in excess of \$45,000 shall not be considered when calculating longevity payments. Finally, the Borough seeks the elimination of longevity benefits for all employees hired after January 1, 2007.

The PBA is opposed to any changes in the current longevity schedule and asserts that the Borough has not submitted sufficient proof to justify a reduction of benefits for current employees and elimination of the benefit for employees hired after January 1, 2007.

The Borough's proposal eliminates all longevity benefits for police officers hired after January 1, 2007. The Borough's proposal also reduces the current maximum that the longevity benefit is calculated to \$45,000. Thus, the current maximum value of longevity (12% of \$80,004) of \$9,600 would be reduced to \$4,500 (10% of \$45,000).

The evidence in the record does not support the Borough's longevity proposal. As stated at the outset, a governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. The Borough has not met its burden of showing a need for such change. There is no evidence in the record to support the Borough's proposal. There is no evidence that longevity is being capped or eliminated in Monmouth and Ocean County.

The Borough's proposal is predicated on internal comparability. As discussed above, the Borough negotiated reduced longevity benefits in two other bargaining units. In the Teamsters CBA, the reduction includes a \$42,000 cap and elimination of longevity for all employees hired after January 1, 2004. In the ATU agreement, the reduction includes a \$45,000 cap and elimination of longevity for all employees hired after January 1, 2007. Internal comparability is deserving of serious consideration. However, in both CBAs, the trade-off for these longevity concessions included significantly higher salary increases that are much higher than the Borough's proposed salary increases and the awarded salary increases. Both bargaining units received 5.5% salary increases in each of the three years of their respective CBAs. This is 7.5% more than the Borough's salary proposal and 4% more than the awarded salary increases. In some cases, the salary increases in the ATU and IBT agreements exceeded 5.5% if the dollar per hour increase was greater than 5.5%. In the IBT agreement, the hourly increases of \$1.50, \$1.75, \$2.00 and \$2.00 generated annual increases

for a thirty-five-hour work week of \$2,730, \$3,185, \$3,640 and \$3,640 for a total base increase of \$13,195. This is a significant salary increase that must be measured against the longevity concessions. No such comparable salary increases were offered by the Borough to its police officers in return for longevity concessions. Nor do the awarded salary increases approach the increases received by the Borough's other bargaining units.

In addition, in my discussion on maximum patrol officer salaries, I concluded that the Borough's maximum salaries are competitive when longevity benefits are included in total compensation. A reduction of longevity benefits by capping at \$45,000 and elimination for future hires would make the maximum salary less competitive and negatively impact on the continuity and stability of employment in the Borough. Under the Borough's proposal, current officers would receive reductions in longevity ranging from \$900 to \$8,500.

The implementation of a two-tiered system has the potential for reducing the Borough's ability to recruit and retain qualified and experienced police officers. By all accounts, the Point Pleasant Beach police department is an excellent department with high productivity. The Borough acknowledged that the police department is a well-trained, well-equipped professional workforce. The Borough's ability to recruit and retain its officers is directly related to the compensation package received by the Borough's police officers. The longevity compensation is an integral part of compensation and a reduction in the current compensation package will undermine the Borough's ability to recruit and retain experienced and well-educated police officers. Eliminating longevity will make other communities more attractive to newly hired officers creating the potential for turnover.

For all of the above reasons, I find that the Borough did not meet its burden to justify a change in the current longevity benefit and it is hereby denied. I have given considerable weight to the continuity and stability of employment factor, comparison of the wages of

Borough police officers to the wages of police officers in similar jurisdictions, internal comparability and overall compensation.

### **Officer-In-Charge-Pay**

The PBA proposes that all work performed in a Sergeant's position be compensated at the Sergeant's pay rate. The PBA contends that this is a common benefit found in the other contracts in evidence. The PBA cites Officer Distelcamp's testimony that police officers are running shifts with increased frequency, they are supervising other police officers and also supervising Specials which are used during summer hours. The PBA maintains that this is a significant obligation that deserves appropriate compensation.

The current 2003-2006 CBA includes a provision in Article 5, Section D, that provides as follows:

“When a Sergeant or Lieutenant is not present on the regular tour, the Senior Patrol Officer (the Patrol Officer with the lowest badge number) on that tour shall receive Shift Commander Pay. The Shift Commander Pay shall be twenty dollars (\$20.00) for each complete tour. There shall be no Shift Commander Pay for partial tours, except when a Sergeant or Lieutenant is assigned to an overlapping tour, such as the ‘Boardwalk Shift’ or assigned to administrative duties.” (B-1 at 7).

A review of B-8, the 2001-2003 CBA shows that the Shift Commander Pay has not increased since at least January 1, 2001.

I conclude that the Shift Commander Pay is deserving of an increase. Therefore, I shall modify Section D of Article 5 as follows:

“When a Sergeant or Lieutenant is not present on the regular tour, the Senior Patrol Officer (the Patrol Officer with the lowest badge number) on that tour shall receive Shift Commander Pay. The Shift Commander Pay shall be paid at the Sergeant pay rate for each complete tour. There shall be no Shift Commander Pay for partial tours, except when a Sergeant or Lieutenant is assigned to an overlapping tour, such as the ‘Boardwalk Shift’ or assigned to administrative duties.”

This modification shall be effective July 1, 2008.



### **Personnel Files**

I shall incorporate the parties' Stipulated Agreement to include the PBA's proposal concerning Personnel Files in the award. The new CBA shall include the language contained in P-1.

### **PBA Time Off**

The PBA proposes that the current one hundred twenty (120) hour annual provision be increased to two hundred (200) hours per annum. The PBA contends that time off for PBA officials is more liberal in virtually all other jurisdictions. The PBA again relies on the testimony of Officer Distelcamp that there isn't sufficient PBA time off to effectively serve the local. In addition, the PBA notes that the State Delegate has been recently elected as a Vice-President of the New Jersey State PBA. The PBA contends that the testimony established that even in the preceding years, prior to the election of the Delegate to the State Office, there was not enough time to serve the local properly.

I note that the CBA provides 120 hours for the President and the Delegate to "attend to Association business." This is in addition to any statutory leave time for attendance at PBA conventions. I conclude that there is no basis to permanently increase the current 120 hours of leave time provided under the CBA. However, I shall award an additional 60 hours of leave time for the Delegate to use for meetings that require his attendance as Vice President of the PBA. This additional sixty hours of leave time will continue during the period that the Delegate serves as Vice President of the State PBA and will cease upon the end of his term as Vice President.

This shall be effective July 1, 2008 and shall be prorated at thirty additional hours in 2008.

### **Grievance Procedure & Disciplinary Information**

The PBA proposes a new grievance procedure which includes minor discipline. In addition, the PBA proposes that any disciplinary actions, specifically final results, involving any PBA member shall be provided to the PBA by the Borough. The PBA contends that disciplinary information is needed to be able to fully represent its members and that it simply seeks the final resolution of a disciplinary proceeding for informational purposes. The PBA maintains that this is clearly provided under the case law developed through PERC and is appropriate for representational purposes in the future.

The Borough, in its brief, expressed no opposition to the PBA's non-economic proposals. Accordingly, I shall award the PBA's proposal subject to review by the Borough's Labor Attorney. I shall retain jurisdiction to resolve any disputes regarding the final language. This new language shall be effective July 1, 2008.

### **Bereavement Leave**

The PBA proposes that the bereavement leave time allocation be on a day-for-day basis regardless of the schedule the officer is working. The PBA submits that its "Bereavement" proposal, a clarification of that which is currently being implemented, was supported by the testimony of Officer Distelcamp which established that the practice of permitting bereavement time for close family members is currently on a "day for day basis." The PBA acknowledges that in the past, eight-hour days were used for computation. However, officers now work twelve-hour work days and officers have been permitted to take twelve-hour days for appropriate bereavement. The PBA asserts that it only seeks to clarify and incorporate the recent practice to make it clear.

Again, the Borough, in its brief, expressed no opposition to this proposal. I note that the current language refers to "four days of consecutive leave" and not to any specific

number of hours. There appears to be agreement that the PBA's proposal codifies the current practice of permitting four days of consecutive leave regardless of the length of the officer's workday. Accordingly, I direct the parties to amend Article XIV to accurately reflect the parties' current practice. I shall retain jurisdiction to resolve any disputes regarding the final language. This new language shall be effective July 1, 2008.

### **Lawful Authority of the Employer**

Three of the statutory criteria, N.J.S.A 34:12A-16g(1), (5) and (9), refer to the lawful authority of the employer. These factors, among other things, require the arbitrator to consider the limitations imposed on the Borough by the CAP law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

More specifically, g(1) refers to the original 1976 Cap law; g(5) refers to the lawful authority of employer and cites the 1976 Cap law; and g(9) refers to the recently enacted 2007 Cap law which limits tax levy increases. It is well established that arbitrators must recognize and respect the statutory limits which have been placed on public employers. The Borough of Point Pleasant Beach and all other municipalities in the State face constraints in their ability to increase appropriations and, beginning in 2008, on their ability to raise taxes. The expenditure or appropriations cap applies to the total current expense portion of the budget and not to any particular line item within the budget. Under the expenditure cap, the current expense portion of the budget can be increased by a maximum of 3.5% without a referendum. It is well established that the Reform Act does not require an arbitrator to award the amount the employer has budgeted. The Borough is free to budget an amount which it

considers sufficient for negotiations of CBAs and that amount is not determined by the CAP Law.

PERC discussed a public employer's obligations under the CAP Law and the Interest Arbitration Reform Act in County of Essex v. Essex County Sheriff's PBA Local No. 183, PERC No. 2005-52, IA-2003-37 (2005). The following are relevant excerpts:

Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. (citing, Teaneck, 25 NJPER at 459.)

The Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award. Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2) However, the CAP law is only one of the many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296 (holding that an award that exceeded the CAP rate was reasonable, even though it would force the municipality to effect economies). Moreover, in enacting both the interest arbitration law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments.

In Essex, The Commission cited the following excerpt from a textbook used in a required course for municipal finance officer certification:

Demands for improved wages and benefits will not always coincide with adopted budgets. Difficulties are often experienced in meeting statutory deadlines. Retroactivity of contract provision may create financing problems. Finance officers have to develop flexible budget timetables, provide for operating reserve funds or contingencies, and make supplemental appropriations (with governing body approval) in order to finance increased salaries and benefits. [Robert Benecke, Municipal Finance Administration in New Jersey, I-18 (July 2004), prepared for Rutgers, The State Univ. of New Jersey, Center for Government Services]

In Essex, the Commission provided further direction:

In sum, an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or legal authority to direct an employer as to how to finance or comply with an award. See, Irvington, 81 N.J. at 296.

As the evidence in the record shows, the average salary increases are approximately 4% in 2007, 2008 and 2009. The Borough was certainly aware of these wage trends when it formulated its last offer. The Borough was also aware that contiguous communities had resolved their police negotiations with salary increases consistent with area and state-wide trends. I awarded salary increases of 4% in 2007 and 2008 and 4.25% in 2009 and 2010. These salary increases, while 1% to 1.25% higher than the Borough's proposed salary increases, are offset by the savings that the Borough will realize from my award of health care contributions effective July 1, 2008.

A review of J-6 (2007 Municipal Budget) shows that the Borough is well within its Cap restrictions. This shows that the "level of operating appropriations within Cap" is \$8,799,102. J-6 shows that the 2007 actual operations within Cap is \$8,711,344 which is \$87,750 below Cap. The cost of the awarded salary increase in 2007 is \$18,646 more than the Borough's proposed salary increase in 2007. The difference in cost increases by compounding in 2008, 2009 and 2010 but are offset in 2008, 2009 and 2010 by the health care contributions.

There is absolutely no evidence in the record to show that the awarded salary increases or any other aspect of this award will cause the Borough to approach the limits of its financial authority or to breach the constraints imposed by the three statutory criteria, N.J.S.A. 34:12A-16g(1), (5) and (9), in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,  
its Residents and Taxpayers**

The financial impact of the awarded salary increases, while higher than the Borough's proposed salary increases, is not significant when calculated over the four years of the new CBA. The funding of the awarded salary increases will have minimal financial impact on the Borough.

There is no evidence that the terms of my award will require the Borough to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the Borough's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

**Cost of Living**

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), for New York-Northern New Jersey increased by 3.7% in 2007 and is up 3.9% (annualized) through April 2008. This is above the Borough's last offer and marginally below the awarded salary increases in 2007 and 2008.

I conclude that the awarded base salary increases, while moderately higher than the increases in the cost of living in 2007 and 2008, provide for an acceptable increase in real earnings that must be measured against the continued delivery of quality services by the Borough's police officers. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in real earnings consistent with historical trends.

### **Continuity and Stability of Employment**

The terms of my Award will maintain the continuity and stability of employment for the Borough's police officers. The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the Borough to continue to recruit and retain qualified police officers. This factor was given considerable weight in my analysis of the Borough's longevity proposal. I concluded that longevity is an integral part of compensation and a reduction in the current compensation package will undermine the Borough's ability to recruit and retain experienced and well-educated police officers. Eliminating longevity will make other communities more attractive to newly hired officers creating the potential for turnover.

I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

### **Overall Compensation**

I have considered the overall compensation received by the Borough police officers and find that the terms of my Award will maintain the existing levels of economic benefits. I have given considerable weight to this criterion in denying the Borough's longevity proposal. I have determined that the overall compensation is competitive when longevity is factored into total compensation. Point Pleasant Beach police officers will maintain their current ranking in comparison to their peers. The terms of my award are consistent with other external settlements in Monmouth and Ocean County and throughout the State, thus maintaining a consistent level of benefits.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:

## AWARD

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2007 through December 31, 2010.

2. **Salary:**

- (a) All steps on the 2006 salary schedule shall be increased by 4% effective January 1, 2007.
- (b) All steps on the 2007 salary schedule shall be increased by 4% effective January 1, 2008.
- (c) All steps on the 2008 salary schedule shall be increased by 4.25% effective January 1, 2009.
- (d) All steps on the 2009 salary schedule shall be increased by 4.25% effective January 1, 2010.
- (e) The current 10% rank differential for Sergeants, Lieutenants and Captains shall be applied effective January 1 in each of the four years of the new CBA.
- (f) All salary increases are fully retroactive. The following is the new salary schedule:

### **SCHEDULE A** **ANNUAL BASE WAGES**

STEP	Eff. 1/1/07	Eff. 1/1/08	Eff. 1/1/09	Eff. 1/1/10
1A	\$40,340	\$41,954	\$43,737	\$45,596
1B	\$45,009	\$46,809	\$48,798	\$50,872
2	\$48,725	\$50,674	\$52,828	\$55,073
3	\$55,168	\$57,374	\$59,813	\$62,355
4	\$62,732	\$65,241	\$68,014	\$70,904
5	\$65,944	\$68,582	\$71,497	\$74,535
6	\$75,872	\$78,907	\$82,260	\$85,757
7	\$83,204	\$86,532	\$90,210	\$94,044



3. **Health Care Contributions:**

Effective July 1, 2008, bargaining unit members with employee only health insurance shall contribute \$20 monthly and bargaining unit members with dual or family coverage health insurance; i.e., employee and spouse; parent and child; and full family shall contribute \$40 monthly. The Borough shall implement an IRS 125 plan to permit pre-tax health care contributions.

4. **Officer-In-Charge-Pay:**

Effective July 1, 2008, Section D of Article 5 shall be amended to read as follows:

“When a Sergeant or Lieutenant is not present on the regular tour, the Senior Patrol Officer (the Patrol Officer with the lowest badge number) on that tour shall receive Shift Commander Pay. The Shift Commander Pay shall be paid at the Sergeant pay rate for each complete tour. There shall be no Shift Commander Pay for partial tours, except when a Sergeant or Lieutenant is assigned to an overlapping tour, such as the ‘Boardwalk Shift’ or assigned to administrative duties.”

5. **Personnel Files:**

I shall incorporate the parties’ Stipulated Agreement to include the PBA’s proposal concerning Personnel Files in the award. The new CBA shall include the language contained in P-1.

6. **PBA Time Off:**

Effective July 1, 2008, I shall award an additional sixty (60) hours of leave time for the Delegate to use for meetings that require his attendance as Vice President of the PBA. This additional sixty hours of leave time will continue during the period that the Delegate serves as Vice President of the State PBA and will cease upon the end of his term as Vice President. This shall be prorated in 2008 at thirty (30) additional hours.

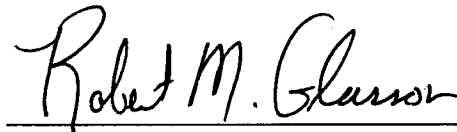
7. **Grievance Procedure & Disciplinary Information:**

I shall award the PBA’s proposal subject to review by the Borough’s Labor Attorney. I shall retain jurisdiction to resolve any disputes regarding the final language. This new language shall be effective July 1, 2008.

8. **Bereavement Leave:**

There appears to be agreement that the PBA's proposal codifies the current practice of permitting four days of consecutive leave regardless of the length of an officer's workday. Accordingly, I direct the parties to amend Article XIV to accurately reflect the parties' current practice. I shall retain jurisdiction to resolve any disputes regarding the final language. This shall be effective July 1, 2008.

9. All proposals of the Borough and the PBA not awarded herein are denied. All provisions of the 2004-2006 CBA shall be carried forward except for those provisions modified by the terms of this Award.



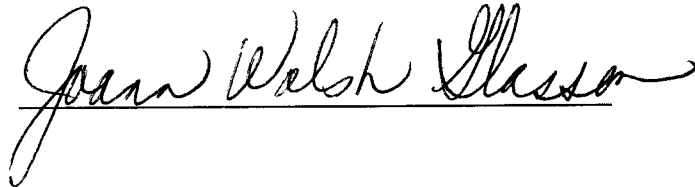
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ROBERT M. GLASSON  
ARBITRATOR

Dated: May 30, 2008  
Pennington, NJ

STATE OF NEW JERSEY) ss.:  
COUNTY OF MERCER)

On this 30<sup>th</sup> day of May 2008, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.

A handwritten signature in cursive script that reads "Joann Walsh Glasson". The signature is written in black ink and is positioned above a horizontal line.

**JOANN WALSH GLASSON**  
**NOTARY PUBLIC OF NEW JERSEY**  
**Commission Expires 12/11/2011**